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Vol. 50 No. 38

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# Federal Register

Tuesday  
February 26, 1985

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## Selected Subjects

### Air Pollution Control

Environmental Protection Agency

### Air Traffic Control

Federal Aviation Administration

### Antibiotics

Food and Drug Administration

### Aviation Safety

Federal Aviation Administration

### Cable Television

Federal Communications Commission

### Claims

Agriculture Department

### Crop Insurance

Federal Crop Insurance Corporation

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Consumer Product Safety Commission

### Freedom of Information

Consumer Product Safety Commission

### Government Contracts

Immigration and Naturalization Service

### Government Procurement

Health and Human Services Department

### Hazardous Waste

Environmental Protection Agency

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Questions and requests for specific information may be directed to the telephone numbers listed under **INFORMATION AND ASSISTANCE** in the **READER AIDS** section of this issue.

## Selected Subjects

### Loan Programs—Education

Education Department

### Organization and Functions (Government Agencies)

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## OFFICIAL REPORT OF THE BOARD

THE BOARD OF THE AMERICAN MEDICAL ASSOCIATION HAS THE HONOR TO ANNOUNCE THAT THE FOLLOWING OFFICIAL REPORT OF THE BOARD IS HEREBY SUBMITTED TO THE MEMBERS OF THE ASSOCIATION FOR THEIR CONSIDERATION AND ACTION.

## 1918

1. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1918:

2. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1918:

## 1919

3. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1919:

4. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1919:

5. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1919:

6. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1919:

## 1920

7. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1920:

8. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1920:

9. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1920:

## 1921

10. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1921:

11. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1921:

12. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1921:

## 1922

13. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1922:

14. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1922:

15. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1922:

## 1923

16. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1923:

17. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1923:

18. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1923:

## 1924

19. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1924:

20. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1924:

21. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1924:

## 1925

22. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1925:

23. The Board has the honor to announce that the following resolutions have been adopted by the Board at its meeting held at Chicago, Ill., on May 1, 1925:



# Rules and Regulations

Federal Register

Vol. 50, No. 38

Tuesday, February 26, 1985

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Parts 1 and 3

#### Debt Collection

**AGENCY:** Department of Agriculture.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal Government to collect debts owed it by means of administrative offset; to assess interest, penalties and administrative costs on overdue debts against its debtors; to contract for private collection services; and to disclose information on debts to credit reporting agencies and the Internal Revenue Service. This document establishes regulations to implement the statutory provisions. The interim rule will enhance USDA's ability to recover delinquent debts promptly, and minimize the adverse impact on the economy as well as the Department's delivery of program services.

**DATES:** This interim rule is effective February 26, 1985. Comments must be received on or before April 29, 1985.

**ADDRESS:** Send comments to: Larry Wilson, Deputy Director, Office of Finance and Management, U.S. Department of Agriculture, Washington, D.C. 20250. Written comments received may be inspected in Room 118-W of the Administration Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Larry Wilson, Deputy Director, Office of Finance and Management, Room 118-W, U.S. Department of Agriculture, Washington, D.C. 20250, phone (202) 447-8345.

#### SUPPLEMENTARY INFORMATION: Background

The Debt Collection Act of 1982, (applicable sections codified at 31 U.S.C. 3701, 3711, and 3716-19) makes several changes in the way Executive agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect money owed it, while adding certain notice requirements and other protections for the Government's debtors. This interim rule establishes Department of Agriculture regulations in order to set forth general statements of policy and rules of procedure which implement several provisions of the Act.

USDA agency implementation of and compliance with the Debt Collection Act, the Federal Claims Collections Standards and this interim rule will be coordinated by the Assistant Secretary for Administration.

Section 3.21 of this interim rule delegates and establishes collection authority within the USDA and provides a general statement concerning administrative offset and debt disclosure to be included in all contracts and written agreements executed after the effective date of this interim rule and not specifically exempted.

Section 3.22 of this interim rule contains definitions necessary to implement this interim rule.

Sections 3.23-3.31 of this interim rule implement 31 U.S.C. 3716, which authorizes the collection of debts by administrative offset against payments to be made to a debtor by the United States under programs providing loans, contracts, grants, or other benefits. Protection is provided to debtors by requiring that an individual debtor be given notice of a debt and an opportunity to review the record and enter into a written repayment agreement before the money is collected by offset.

Administrative offset under 31 U.S.C. 3716 does not apply when a statute explicitly provides for or prohibits collection of a claim by administrative offset. Collection by means of administrative offset of contract debts owed to the U.S. Department of Agriculture is not prohibited by the Contract Disputes Act of 1978 (41 U.S.C. 601-613) and is therefore authorized by 31 U.S.C. 3716. USDA will determine and review the propriety of administrative offset of contract debts separately from their administrative

evaluation of the debts' merit under the Contract Disputes Act. The decision of the debt management officer will relate only to the propriety of collecting particular monies owed the Government by administrative offset and does not relate to the merits of the underlying debt beyond a prima facie showing of indebtedness. As with all debts, the amount of the claim need not be undisputed or reduced to judgment prior to offset, but must be a fixed sum or capable of being fixed by reliable computation based on unconditioned information possessed by the creditor agency. The propriety of collection by offset will be determined on a case-by-case basis under the guidelines set forth by this interim rule and the Federal Claims Collection Standards.

Section 3.32 of this interim rule provides for administrative offset against amounts payable from the Civil Service retirement and disability fund.

Section 3.33 of this interim rule implements 31 U.S.C. 3728 and provides for administrative offset of a debtor's judgment against the United States.

Section 3.34 of this interim rule implements 31 U.S.C. 3717 and requires USDA agencies to charge interest, administrative costs, and penalties against delinquent debtors.

Section 3.35 of this interim rule requires USDA to report all commercial debts and all delinquent consumer debts to credit reporting agencies, and implements 31 U.S.C. 3711(f)(1), which authorizes agencies to disclose information on debts to consumer reporting agencies and places limitations on the disclosure process affecting both the timing and content of the disclosure.

Section 3.36 of this interim rule sets forth certain required minimum provisions of contracts for collection services to recover debts owed the United States, as authorized by 31 U.S.C. 3718.

Subpart D is necessary to facilitate cooperation with, and obtain assistance from, the Internal Revenue Service in the collection of debts owed the Department.

Section 3.81 of this interim rule requires compliance with the Treasury Fiscal Requirements Manual.

Section 3.82 of this interim rule implements 31 U.S.C. 3720A, which permits administrative offset against tax refunds.



## Public Comment

Assistant Secretary for Administration John J. Franke, Jr. has determined that a situation exists which warrants publication of this interim rule without prior opportunity for public comment.

Delinquent and overdue debts owed to USDA represent funds which could be used to carry out Government programs. While they remain unpaid, USDA and the Treasury Department must borrow money to operate, thus increasing the Federal Government's deficit. Treasury borrowing pushes up interest rates and reduces credit available to other sectors of the American economy. The interim rule will enhance USDA's ability to recover delinquent debts promptly, and minimize the adverse impact on the economy as well as the Department's delivery of program services. It is closely patterned after the Federal Claims Collection Standards which received extensive public comment.

Further, pursuant to the administrative procedures provisions in 5 U.S.C. 553, it is found upon good cause that prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest; and good cause is found for making this interim rule effective upon publication. Comments are solicited for 60 days after publication of this document. A final document discussing comments received and any amendments made will be published in the *Federal Register*.

## Regulatory Impact

USDA has reviewed this interim rule in accordance with Executive Order 12291 and has determined that it is not a major rule. The Department has determined that this action will not have a significant effect on the economy and will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It is anticipated that this interim rule will enable USDA to increase collections by about \$50 million, representing money that is already owed and overdue. It will impact on only a small percentage of USDA program recipients: those who are

delinquent in repaying their debts to the Government.

Under the circumstances explained above, the Assistant Secretary for Administration has determined that this action will not have a significant economic impact on a substantial number of small entities. Further, this interim rule will not result in additional procedures or paperwork not already required by law. Therefore, the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) are not applicable. This interim rule sets procedures for debt management and does not affect the environment.

## List of Subjects in 7 CFR Parts 1 and 3

Administrative offset, Claims, Debt management.

## PART 1—[AMENDED]

Accordingly, 7 CFR is amended as follows:

## § 1.52 (Removed)

1. In 7 CFR Part 1, § 1.52, is removed.

## PART 3—DEBT MANAGEMENT

2. In 7 CFR Part 3, the heading to Part 3, "Debt Settlement", is changed to "Debt Management".

## Subpart A—Settlement of Small or Old Debts

3. In 7 CFR Part 3, a heading, "Subpart A—Settlement of Small or Old Debts", is added before § 3.1.

4. In 7 CFR Part 3, a new subpart B is added after § 3.10 in Subpart A to read as follows:

## Subpart B—Debt Collection

- |      |                                                                                   |
|------|-----------------------------------------------------------------------------------|
| Sec. |                                                                                   |
| 3.21 | Debt collection standards.                                                        |
| 3.22 | Definitions.                                                                      |
| 3.23 | Collection by administrative offset.                                              |
| 3.24 | Coordinating administrative offset with other Federal agencies.                   |
| 3.25 | Notice requirements before offset.                                                |
| 3.26 | Exceptions to notice requirements.                                                |
| 3.27 | Inspection of USDA records related to the debt.                                   |
| 3.28 | Written agreements to repay debt as alternative to administrative offset.         |
| 3.29 | Departmental review of administrative offset.                                     |
| 3.30 | Stay of offset.                                                                   |
| 3.31 | Agency procedures.                                                                |
| 3.32 | Offset against amounts payable from Civil Service retirement and disability fund. |
| 3.33 | Offset of debtor's judgment against the United States.                            |

## Sec.

- |      |                                               |
|------|-----------------------------------------------|
| 3.34 | Interest, penalties and administrative costs. |
| 3.35 | Disclosure to a credit reporting agency.      |
| 3.36 | Contracting for collection services.          |

Authority: 31 U.S.C. 3701, 3711, 3716-3719, 3728; 4 CFR Part 102; 4 CFR 105.4.

## Subpart B—Debt Collection

## § 3.21 Debt collection standards.

(a) The regulations in this subpart are issued under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719), and the Joint Regulations issued under the Act by the Attorney General and the Comptroller General (4 CFR Parts 101-105), prescribing Government-wide standards for administrative collection, compromise, suspension or termination of agency collection action, disclosure of debt information to consumer reporting agencies, referral of claims to private collection contractors for resolution, and referral to the General Accounting Office and to the Department of Justice for litigation of civil claims by the Government for money or property.

(b) The head of each agency of the Department may carry out the duties and exercise the authority of the Secretary under 31 U.S.C. 3701, 3711, 3716-3719, 3728, the Joint Regulations of the Attorney General and the Comptroller General, and the regulations in this Part, with respect to the claims of the agency. The Assistant Secretary for Administration and the Director of the National Finance Center may carry out these duties and exercise this authority on behalf of agency heads.

(c) Except where administrative offset is explicitly prohibited by statute or where other procedures are explicitly provided for by statute, all contracts and other written agreements which are executed after the effective date of these regulations between an agency and any person or entity must include the following or substantially similar language:

Any monies that are payable or may become payable from the United States under this agreement to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or legal entity owes to the United States, under the Federal Claims Collection Act of 1966, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3701, 3711, 3716-3719); 4 CFR Part 102 and Subpart B of this part. Information on the person's or legal



entity's responsibility for a commercial debt or delinquent consumer debt owed the United States will be disclosed to consumer or commercial credit reporting agencies.

### § 3.22 Definitions.

In this subpart:

(a) "Debt management officer" means an agency employee responsible for collection by administrative offset of debts owed the United States.

(b) "Contracting officer" has the same meaning as in 41 U.S.C. 601.

(c) "Creditor agency" means a Federal agency to whom a debtor owes a monetary debt. It need not be the same agency that effects the offset.

(d) "Offsetting agency" means an agency that withholds from its payment to a debtor an amount owed by the debtor to a creditor agency, and assures that the funds are paid to the creditor agency to be applied to the debt.

(e) "Reviewing officer" means an agency employee responsible for conducting a hearing or providing documentary review on the propriety of administrative offset.

### § 3.23 Collection by administrative offset.

(a) Whenever feasible, each agency of the Department of Agriculture must use, or request any other Federal agency to use, administrative offset in accordance with 4 CFR 102.3 to collect debts due the United States. The debt need not be reduced to judgment or be undisputed.

(b) The feasibility of collecting a debt by administrative offset will be determined on a case-by-case basis considering among other factors the following:

(1) Legal impediments to administrative offset, such as contract provisions, or degree of certainty as to the factual basis (other than the debt amount) of the Government's claim.

(2) Practicality, considering such questions as costs in time and money of administrative offset relative to the size of the debt.

(3) Whether offset would substantially interfere with or defeat the purposes of a program authorizing payments against which offset is contemplated, as where payment is an advance for future performance by the debtor of a service the Government desires.

(c) The offset will be effected 31 days after the debtor receives a Notice of Intent to Collect by Administrative Offset, or when a stay of offset expires, unless the agency determines under § 3.26 that immediate action is necessary. If the debtor owes more than one debt, amounts recovered through administrative offset may be applied to

them in any order, with attention to applicable statutes of limitation.

(d) These procedures will be used to collect any debt subject to 31 U.S.C. 3716, including contract debts. A contracting officer administering a claim under the Contract Disputes Act (CDA), 41 U.S.C. 601-613 must promptly refer the claim to the agency debt management officer for consideration of administrative offset apart from CDA proceedings.

(e) An agency debt management officer will determine the prima facie existence of the debt, the feasibility of administrative offset as a means of collection and what monies, if any, are payable or may become payable to the debtor. No agency employee may act as debt management officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer.

(f) An agency reviewing officer will afford debtors review of the issue of administrative offset under these rules. No agency employee may act as a reviewing officer for the consideration of collection by administrative offset in a matter for which the employee was a contracting officer or a debt management officer.

### § 3.24 Coordinating administrative offset with other Federal agencies.

(a) A Government list or other notice, naming debtors and their creditor agencies, which is provided to USDA will constitute a request for administrative offset.

(b) Any agency which requests another agency to effect administrative offset must certify that the debtor owes the debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR Part 102 have been met.

(c) An agency which is requested by another agency to effect administrative offset must not do so without obtaining a written certification that the debtor owes the creditor agency a debt (including the amount and basis of the debt and the due date of the payment) and that all of the applicable requirements of 31 U.S.C. 3716 and 4 CFR Part 102 have been met. An offsetting USDA agency may rely on the information contained in a requesting creditor agency's certification.

(d) Only a creditor agency may agree to an installment repayment system or compromise, suspension or termination of the collection process.

(e) A USDA agency which is requested by another agency to effect administrative offset may decline for

good cause. Good cause includes direct or indirect disruption of the offsetting agency's essential program operations that might result from the offset. The refusal and the reasons must be sent in writing to the creditor agency.

### § 3.25 Notice requirements before offset.

(a) Before an agency effects administrative offset, the creditor agency must provide the debtor with a minimum of 30 calendar days' written notice that unpaid debt amounts will be collected by administrative offset against any money that the United States is going to pay to the debtor, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement of requests review.

(b) The Notice of Intent to Collect by Administrative Offset must be served on the debtor by personal delivery or certified mail and will state:

(1) The amount of the debt, the date it was incurred, the name and address of the offsetting agency, and the program under which the debt was incurred.

(2) The rate of interest accrued from the date of mailing or other delivery of the initial demand letter, and the amount of any other penalties or administrative costs added to the principal debt.

(3) The creditor agency's intention to collect the debt by administrative offset against any funds that might become available, until the principal debt and all accumulated interest and other charges are paid in full.

(4) The date on which administrative offset will be effected, unless the creditor agency determines immediate action is necessary under § 3.26, or the debtor enters into a repayment agreement or requests a review.

(5) That the debtor has a right to inspect and copy agency or other Department records related to the debt. The debtor must pay copying costs unless they are waived by the agency.

(6) That the debtor may enter into a written agreement to repay the debt, which must be approved by the creditor agency.

(7) That the debtor has a right to obtain review of the agency's determination that the debt exists and the propriety of administrative offset.

(8) That a repayment agreement or request for review may be sought only from the creditor agency and not the offsetting agency.

(9) Time limitations and other procedures or conditions imposed by the agency.



(10) The address to which the debtor should send all correspondence relating to the offset.

(c) Any demand for payment will include a Notice of Intent to Collect by Administrative Offset, even if the debt is not delinquent at the time the letter is sent.

### **§ 3.26 Exceptions to notice requirements.**

(a) When the procedural requirements of § 3.25 have been met by the creditor agency or under some other statutory or regulatory authority, an agency need not duplicate the notice before effecting administrative offset.

(b) A USDA agency may effect administrative offset against a payment to be made to a debtor before completion of the procedures in § 3.25 when the agency finds, or is advised by the requesting creditor agency, that:

(1) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, such as where possible insolvency of the debtor might encourage competition among creditors for funds, or where expiration of a statute of limitations is imminent; and

(2) The time before the payment is to be made does not reasonably permit the completion of these procedures.

(c) The finding required by paragraph (b) of this section must be furnished by the offsetting agency to the debtor in writing as soon as reasonably possible after the offset is effected. Promptly after administrative offset is effected under this subsection, the creditor agency must give the debtor the notice required by § 3.25.

(d) An offsetting USDA agency may rely on the information contained in a creditor agency's request for administrative offset under this section.

### **§ 3.27 Inspection of USDA records related to the debt.**

A debtor who intends to inspect or copy agency or Departmental records in connection with an administrative offset action must notify the agency in writing within 20 calendar days of the date the Notice of Intent to Offset was delivered to the debtor. In response, the agency must notify the debtor of the location, time, and any other conditions, consistent with Part 1, Subpart A of this title, for inspecting and copying, and that the debtor may be liable for reasonable copying expenses.

### **§ 3.28 Written agreements to repay debt as alternative to administrative offset.**

The debtor may, in response to Notice of Intent to Collect by Administrative Offset, propose to the creditor agency a written agreement to repay the debt as

an alternative to administrative offset. Any debtor who wishes to do this must submit a written proposal for repayment of the debt, which must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor. In response, the creditor agency must notify the debtor in writing whether the proposed agreement is acceptable. In exercising its discretion, the creditor agency must balance the Government's interest in collecting the debt against fairness to the debtor.

### **§ 3.29 Departmental review of administrative offset.**

(a) A debtor who receives a Notice of Intent to Collect by Administrative Offset may request a hearing or documentary review of the agency's determination that the debt exists and the propriety of administrative offset. Any debtor who wishes to do this must submit a written explanation of why the debtor disagrees and seeks review. The request must be received by the creditor agency within 20 calendar days of the date the notice was delivered to the debtor.

(b) In response, the creditor agency must notify the debtor in writing whether the review will be by documentary review or by hearing. If the debtor requests a hearing, and the creditor agency decides to conduct a documentary review, the agency must notify the debtor of the reason why a hearing will not be granted. The agency must also advise the debtor of the procedures to be used in reviewing the documentary record, or of the date, location and procedures to be used if review is by a hearing.

(c) Any documentary review or hearing will be conducted not less than 10 calendar days and no more than 45 calendar days after receipt of the request for review.

(d) A documentary review will be based on agency records plus other relevant documentary evidence which may be submitted by the debtor within 10 calendar days after the request for review is received.

(e)(1) Hearings will be as informal as possible, and will be conducted by a reviewing officer in a fair and expeditious manner. The reviewing officer need not use the formal rules of evidence with regard to the admissibility of evidence or the use of evidence once admitted. However, clearly irrelevant material should not be admitted, whether or not any party objects. Any party to the hearing may offer exhibits, such as copies of financial records, telephone memoranda, or agreements, provided

the opposing party is notified at least 5 days before the hearing.

(2) Debtors may represent themselves or may be represented at their own expense by an attorney or other person.

(3) The substance of all significant matters discussed at the hearing must be recorded. No official record or transcript of the hearing need be created, but if a debtor requested that a transcript be made, it will be at the debtor's expense.

(f)(1) Within no more than 30 calendar days after the hearing or the documentary review, the reviewing officer will issue a written decision to the debtor and the agency, including the supporting rationale for the decision. The deadline for issuance of the decision may be extended by the reviewing officer for good cause for no more than 30 calendar days, and beyond the 30 calendar days extension only with the consent of the debtor. The decision need not be lengthy or formal in style, but must address the substantive issues. The decision should address any significant procedural matter which was in dispute before or during the hearing or documentary review.

(2) The reviewing officer's decision constitutes final agency action as to the propriety of administrative offset, but is not final as to other issues of law, equity or fact relating to the basis of the debt.

(g) The reviewing officer will promptly distribute copies of the decision to the Assistant Secretary for Administration, USDA and to the debtor and the debtor's representative.

### **§ 3.30 Stay of offset.**

(a)(1) When an agency receives a debtor's request for inspection of agency records, the offset is stayed for no longer than 10 calendar days beyond the date set by the creditor agency for the record inspection.

(2) When an agency receives a debtor's proposal for a repayment agreement, the offset is stayed until the debtor is notified as to whether the proposed agreement is acceptable.

(3) When a review is conducted, the offset is stayed until the creditor agency issues a final written decision.

(b) When administrative offset is stayed, the amount of the debt and interest will be withheld from payments to the debtor, but not applied against the debt until the stay expires. If withheld funds are later determined not to be subject to offset, they will be promptly refunded to the debtor.

(c) When administrative offset is stayed, the creditor agency will immediately notify an offsetting agency



to withhold the payment pending termination of the stay.

### § 3.31 Agency procedures.

(a) Any USDA agency may publish in the Federal Register, by rule or notice, a listing by category of the order in which any funds it holds for or intends to pay to a person may be reached by administrative offset.

(b) For principal debts of \$600 or more, an agency head may direct that no compromise be made, or no collection action suspended or terminated without advice from the USDA General Counsel.

### § 3.32 Offset against amounts payable from Civil Service retirement and disability fund.

(a) An agency may request that monies payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset to collect debts owed to the agency by the debtor. The creditor agency must certify that the debtor owes the debt, the amount of the debt, and that the creditor agency has complied with 4 CFR 102.4 and Office of Personnel Management regulations. The request must be submitted to the official designated in Office of Personnel Management regulations.

(b) A USDA creditor agency must coordinate its request to the Office of Personnel Management with the Assistant Secretary for Administration.

### § 3.33 Offset of debtor's judgment against the United States.

Collection by offset against a judgment obtained by a debtor against the United States must be effected in accordance with 31 U.S.C. 3728.

### § 3.34 Interest, penalties and administrative costs.

(a) USDA creditor agencies must attempt to collect interest, penalties and administrative costs on any delinquent debts owed to the United States in accordance with 4 CFR 102.13 and 102.14, or according to written documentation constituting the basis of the debt, or under any guidelines issued by the Assistant Secretary for Administration or by the creditor agency's fiscal officer.

(1) Interest will not be assessed on interest, penalties or administrative costs. However, if a debtor defaults on a repayment agreement, interest which has accrued but was not collected under the defaulted agreement will be added to the principal to be paid under a new repayment agreement.

(2) Agencies will assess a penalty of six percent a year on any unpaid debt balance delinquent for more than 90

days. This charge accrues from the date the debt becomes delinquent.

(3) Agencies will charge the debtor for administrative costs incurred in processing and handling a delinquent debt. Administrative costs may include costs of obtaining credit reports, using a private debt collector, or selling collateral or property to satisfy the debt.

(b) Agencies will waive the collection of interest assessed under these regulations on a delinquent debt or any portion of that debt which is paid within 30 days after the date on which interest began to accrue. Agencies may extend the 30-day period on a case-by-case basis, if it is determined that an extension is appropriate because of partial or complete absence of culpability by the debtor for the delay in payment.

(c) Agencies may waive collection of all or part of the interest, penalties, and administrative costs assessed under these regulations when it is determined:

(1) That the Government cannot collect the full amount of the delinquent debt or interest and costs because of the debtor's inability to pay the full amount within a reasonable time (considering such factors as those listed at 4 CFR 103.2(b)), or the debtor's refusal to pay the full amount where the Government is unable to effect collection in full within a reasonable time; or

(2) That there is a real doubt concerning the Government's ability to recover interest, penalties or costs in court, either because of the legal or equitable issues involved or because the facts are being disputed in court; or

(3) That the cost of collecting the delinquent debt with interest, penalties, or costs outweighs the amounts to be recovered; or

(4) That the collection of some or all of these charges would be against equity and good conscience or not in the best interests of the United States; or

(5) (For waiver of interest) that a request is pending for reconsideration, administrative review, or waiver of the underlying delinquent debt under a statute allowing but not requiring one or more of these remedies. If the statute under which review or waiver is sought by the debtor prohibits the agency from collecting the delinquent debt before resolution of the review or waiver request, interest, penalties and administrative costs must be waived during the period in which collection action is stayed. Otherwise, interest, penalties and administrative costs will not be waived except for a separate reason included in this section; or

(6) (For waiver of interest) that the agency has agreed to a repayment plan consistent with 4 CFR 102.11 and with

§ 3.28 of this subpart, there is no indication of fault or lack of good faith by the debtor, and the amount of interest is sufficiently large relative to the size of the installments reasonably affordable by the debtor that the principal debt would never be repaid; or

(7) The debt is repaid after the date on which interest, penalties and administrative costs became payable and the estimated costs of recovering the remaining interest balance exceed the amount owed to the agency.

(e) The creditor agency must document its reasons for waiving interest, penalties, or administrative costs. This documentation must be retained by the agency for at least three years. Copies must be furnished to the Assistant Secretary for Administration.

### § 3.35 Disclosure to a credit reporting agency.

(a) The Department will report all commercial debts and all delinquent consumer debts to credit reporting agencies. The Department need not report foreign debts, or the debts of State and local governments, Indian tribal governments, or other public institutions.

(b) Disclosure must be consistent with the requirements of 31 U.S.C. 3711(f), 4 CFR 102.3(c), and 5 U.S.C. 552a (the Privacy Act).

### § 3.36 Contracting for collection services.

(a) USDA agencies may contract for collection services in accordance with 31 U.S.C. 3718(c) and 4 CFR 102.6 to recover debts when they become 90 days delinquent.

(b) Contracts with collection agencies must provide that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter to the Justice Department for litigation must be retained by the agency;

(2) The contractor is subject to 5 U.S.C. 552a, the Privacy Act, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;

(3) The contractor is required to account strictly for all amounts collected;

(4) The contractor must provide to the agency any data in its files on actions previously taken to collect the debt, the current address of the debtor, and credit reports, when returning the account to the agency for referral to the Department of Justice for litigation.



**Subpart C—[Reserved]**

5. A new subpart C is added and reserved.
6. A new subpart D is added to read as follows:

**Subpart D—Cooperation with the Internal Revenue Service**

Sec.

3.81 Reporting discharged debts to the Internal Revenue Service.

3.82 Offset against tax refunds.

Authority: 26 U.S.C. 61, 31 U.S.C. 3720A, 1 TFRM 4055.50.

**Subpart D—Cooperation with the Internal Revenue Service****§ 3.81 Reporting discharged debts to the Internal Revenue Service.**

When the Department discharges a debt for less than the full value of the indebtedness it will report the outstanding balance discharged, not including interest, to the Internal Revenue Service, using IRS Form 1099-G or any other form prescribed by the Service, when:

- (a) The principal amount of the debt not in dispute is \$600 or more; and
- (b) The obligation has not been discharged in a bankruptcy proceeding; and
- (c) The obligation is no longer collectible either because the time limit in the applicable statute for enforcing collection expired during the tax year, or because during the year a formal compromise agreement was reached in which the debtor was legally discharged of all or a portion of the obligation.

**§ 3.82 Offset against tax refunds.**

The Department will take action to effect administrative offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

Done at Washington, D.C., this 22d day of February 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-4744 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-01-M

**Federal Crop Insurance Corporation**  
**7 CFR Part 408**

[Doc. No. 1880S; Amdt. No. 1]

**Eastern United States Apple Crop Insurance Regulations**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance (FCIC) hereby amends the Eastern United States Apple Crop Insurance Regulations (7 CFR Part 408), effective for the 1985 and succeeding crop years, by expanding the Apple Fresh Fruit Option Amendment contained therein to provide the insured producer with a quality provision for the type of apples insured under the amendment. The intended effect of this rule is to offer a proposal for insurance coverage with a quality provision under certain circumstances when the apples do not grade U.S. No. 1 or do not grade 80 percent fancy or better under U.S. Department of Agriculture standards. The authority for promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** March 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is April 1, 1988.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility

Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In order to provide an apple fresh fruit option amendment to insured producers who wish to insure quality, nor currently in the policy for insuring apples under 7 CFR Part 408, FCIC hereby revises the amendment found in 7 CFR 408.8 to include options A and B for election by Eastern Apple policyholders that wish to insure quality in the insured apple crop. These changes will provide the producers a quality provision for the type of apples they produce. The changes under the Fresh Fruit Option Amendment are:

1. Make the selection of the option amendment applicable to all of the insured's apples intended for both the fresh-market and for processing.

2. Emphasize that any adjustment for quality must be made prior to harvest of the apples.

3. Explain the significance of selecting Option A or B. An insured has three choices:

(a) Loss adjustment according to the Policy for all apples;

(b) Loss adjustment according to Option A for all apples; or

(c) Loss adjustment according to Option A for all apples intended for processing and Option B for all apples intended for the fresh-market.

4. Option A offers for both processing and fresh-market apples the same quality adjustment procedure which last year was available only for fresh-market apples.

5. Option B offers a new quality adjustment procedure for apples intended for fresh-market. Major provisions of this option include:

(a) Reductions in harvested production for increments above 20% of the harvested production not grading Fancy or better due to hail damage.

(b) Counts as 100% cull production, apples knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples.

(c) Counts as production, 30% of all cull production.

(d) Applies no reduction in grade to any apple grading less than U.S. Fancy due solely to size, shape, russetting, or color.

(e) Excludes from appraised production apples knocked to the ground by wind or hail or frozen on the



tree to the extent that harvest is not practical.

6. Changed this option amendment to a continuous contract which may only be cancelled by following specified procedures.

On Monday, November 26, 1984, FCIC published a notice of proposed rulemaking in the Federal Register at 49 FR 46393 to amend the Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408), by amending the Apple Fresh Fruit Option Amendment found therein at 7 CFR 408.8. The public was given 30 days in which to submit written comments on the proposed rule, but none were received. Therefore, the proposed rule as published is hereby issued as a final rule to be effective for the 1985 and succeeding crop years.

#### List of Subjects in 7 CFR Part 408

Crop insurance, Apples.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Eastern United States Apple Crop Insurance Regulations found at 7 CFR Part 408, effective for the 1985 and succeeding crop years in the following instances:

#### PART 408—[AMENDED]

1. The Authority citation for 7 CFR Part 408 is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77, as amended (7 U.S.C. 1506, 1516).

2. 7 CFR 408.8(b) is revised to read as follows:

#### § 408.8 Eastern U.S. apple fresh fruit option.

(a) \* \* \*

(b) For those insureds who elect to insure apples under the Apple Fresh Fruit Option Amendment, all provisions of the Eastern U.S. Apple crop insurance policy will apply, except those provisions in conflict with the amendment as set forth below:

#### U.S. DEPARTMENT OF AGRICULTURE

#### Federal Crop Insurance Corporation

#### Fresh Fruit Option Amendment

Insured's Name \_\_\_\_\_  
Contract No. \_\_\_\_\_  
Address \_\_\_\_\_  
Crop Year \_\_\_\_\_  
Identification No. \_\_\_\_\_  
SSN \_\_\_\_\_  
Tax \_\_\_\_\_

It is hereby agreed that a signed Fresh Fruit Option Amendment indicating your selection of a quality option will be submitted to us on or before the final date for accepting applications for the initial crop year you wish

to insure your apples under this amendment and upon our approval, the following terms and conditions will apply.

1. You must have a Federal Crop Insurance Eastern U.S. Apple Policy (basic policy) in force.

2. You must insure all the acreage of apples in the county in which you have a share regardless of the intended use (fresh-market or processing).

3. In addition to section 8 of the policy, grading of the fruit must be done by us prior to harvest or NO quality adjustment will be made.

4. Separate line entries according to intended use (fresh-market or processing) must be included on the acreage report.

5. Your apples intended for processing will be insured under the quality provisions of Option A only.

6. Your apples intended for fresh-market will be insured under the quality provisions of either Option A or Option B whichever you select.

7. If you select Option A only, Option A will apply to all of your apples intended for processing and fresh-market.

8. If you select Option B (or both options), Option B will apply to all of your apples intended for fresh-market and Option A will apply to all of your apples intended for processing.

9. You must select either Option A or Option B.

In addition to section 9e and in lieu of 17j of the Eastern U.S. Apple Policy, your production to count for any acreage designated for processing and/or fresh-market will be adjusted when your apples are damaged by hail to the extent that such apples will not grade U.S. No. 1 (processor grade). The adjustment factor (not to exceed 1) will be the ratio of the average market price (received by you or determined by us, whichever is larger), for your damaged production to the average market price for U.S. No. 1 (processor grade) apples. There will be no adjustment for quality if the apples do not grade U.S. No. 1 because of size, color or russetting.

#### Option B

a. In lieu of sections 9e(1), 9e(2), 17g and 17j of the Eastern U.S. Apple Policy, the total production to be counted for a unit must include all harvested and appraised production. Harvested apple production which, due to hail damage, does not grade 80 percent U.S. Fancy or better, in accordance with applicable USDA Standards, will be adjusted as follows:

(1) Production with 21 thru 40 percent not grading U.S. Fancy or better will be reduced 2 percent for each percent in excess of 20 percent. The difference between the reduced production and the total production will be considered cull production.

(2) Production with 41 thru 50 percent not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each percent in excess of 40 percent. The difference between the reduced production and the total production will be considered cull production.

(3) Production with 51 thru 64 percent not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each percent in excess of 50 percent. The difference between the reduced production and the total production will be considered cull production.

(4) Production with 65 percent or more not grading U.S. Fancy or better will be considered 100 percent cull production.

b. Apples which are knocked to the ground by wind or frozen to the extent that they can be harvested but not packed or marketed as fresh apples will be considered 100% cull production.

c. 30 percent of all cull production, as determined above, will be counted as production. No reduction in grade will be applied to any apple grading less than U.S. Fancy due solely to shape, russetting or color.

d. Appraised production to be counted must include:

(1) potential production lost due to uninsured causes and failure to follow recognized good apple management practices;

(2) not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our consent.

e. Any appraisal we have made on insured acreage will be considered production to count unless such appraised production:

(1) is harvested;

(2) is further damaged by an insured cause; or

(3) in whole or part, consists of (i) apples knocked to the ground by wind or hail; or, (ii) frozen while on the tree to the extent that harvest is not practical.

10. Your premium rate for Eastern U.S. Apples under the option elected by you will be established by the actuarial table.

11. All provisions of the Eastern U.S. Apple Crop Insurance Policy not in conflict with this amendment are applicable.

12. All determinations under this amendment will be made by us.

13. This amendment may be cancelled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date provided by the policy, preceding such crop year.

Insured's Signature \_\_\_\_\_  
Date \_\_\_\_\_  
Corporation Representative's Signature and Code Number \_\_\_\_\_  
Date \_\_\_\_\_

#### Collection of Information and Data (Privacy Act)

The following statements are made in accordance with the Privacy Act of 1974 (5 U.S.C. 552(a)):

The authority for requesting the information to be supplied on this form is the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and the regulations for insuring apples under the Eastern U.S. Apple Crop Insurance Regulations (7 CFR Part 408). The information requested is necessary for the Federal Crop Insurance Corporation (FCIC) to process the option to insure



apples, determine the correct premium and indemnity, and, to determine the correct parties to the insurance contract. The information may be furnished to FCIC contract agencies and contract loss adjusters, reinsured companies, other U.S. Department of Agriculture Agencies, Internal Revenue Service, Department of Justice, or other State and Federal law enforcement agencies, and in response to orders of a court, administrative tribunal or opposing counsel as evidence in the course of litigation.

Furnishing the Social Security Number is voluntary and no adverse action will result from failure to do so. Furnishing the information, other than the Social Security Number, is also voluntary; however, failure to furnish the correct, complete information requested other than the Social Security Number may result in rejection of the option for insuring apples and subsequent denial of any claim for indemnity which may be filed under such option or may substantially delay acceptance of the option for insuring apples and any subsequent claim for indemnity.

Done in Washington, D.C., on December 20, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Approved by:

Michael A. Bronson,

Acting Manager.

Dated: February 20, 1985.

[FR Doc. 85-4605 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 416

[Doc. No. 1869S]

### Pea Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1986 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of computing indemnities on green peas; (5) providing

for interest payment on late paid indemnities; and (6) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** December 1, 1985.

#### FOR FURTHER INFORMATION CONTACT:

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) an annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On December 19, 1984, FCIC published a notice of proposed rulemaking in the Federal Register at 49 FR 49297, revising and reissuing the Pea Crop Insurance Regulations (7 CFR Part 416), effective for the 1985 and succeeding crop years. Due to an error in scheduling, these regulations will not meet the time constraints required for notice and public comment; therefore, these regulations will be effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule but none were received.

Other than minor changes in language and format, the principal changes in the policy for insuring peas are:

1. Section 1.a.—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. Section 5.a.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will reflect the actual production history of the crop on the unit. Insureds with good loss experience who are receiving a premium discount are protected since they may retain a discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. Section 5.c.—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. Section 9.c.(3)—This section is added so as to provide a more accurate indemnity payment for green peas.

5. Section 9.d.—Effective for the 1986 and succeeding crop years allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted.

When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. Section 15.c.—Add a clause to cancel the contract if production history is not furnished on or before the cancellation date. An exception will be allowed if the insured can show, prior to



the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

7. Section 17.g.—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

8. In addition to the policy changes, FCIC also eliminates the codification of Appendix A. The FCIC service offices will be able to advise a producer if insurance is offered in any county.

#### List of Subjects in 7 CFR Part 416

Crop insurance, Peas.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises the reissues the Pea Crop Insurance Regulations (7 CFR Part 416), and removes Appendix A, effective for the 1986 and succeeding crop years, to read as follows:

### PART 416—PEA CROP INSURANCE REGULATIONS

#### Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

- 416.1 Availability of pea crop insurance.
- 416.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 416.3 OMB control numbers.
- 416.4 Creditors.
- 416.5 Good faith reliance on misrepresentation.
- 416.6 The contract.
- 416.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1500, 1516).

#### Subpart—Regulations for the 1986 and Succeeding Crop Years

##### § 416.1 Availability of pea crop insurance.

Insurance shall be offered under the provisions of this subpart on peas in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

##### § 416.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for peas which will be included in the actuarial table on file in applicable service offices

for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

##### § 416.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 416) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

##### § 416.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

##### § 416.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the pea insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

##### § 416.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form

prescribed by the Corporation. The contract shall cover the pea crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

##### § 416.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the pea crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a pea contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Pea Insurance Policy for the 1986 and succeeding crop years are as follows:

#### DEPARTMENT OF AGRICULTURE

##### Federal Crop Insurance Corporation

##### Pea—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

Agreement to Insure: We will provide the insurance described in this policy in return



for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown in the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

#### Terms and Conditions

##### 1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease on acreage not planted to peas the previous crop year;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of the irrigation water supply due to an unavoidable cause occurring after the beginning of planting; unless those causes are expected, excluded, or limited by the actuarial table or section 9e(8).

b. We will not insure against any loss of production due to:

- (1) Green peas not being timely harvested unless we determine that, due to unusual weather conditions, a substantial amount of acres of green peas in the area ready for harvest at the same time;
- (2) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
- (3) The failure to follow recognized good pea farming practices;
- (4) The impoundment of water by any governmental, public or private dam or reservoir project; or
- (5) Any cause not specified in section 1a as an insured loss.

##### 2. Crop, acreage, and share insured.

a. The crop insured will be either green peas or dry peas which are planted for harvest as peas, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peas planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured peas at the time of planting.

##### d. We do not insure any acreage:

- (1) Of green peas not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and be effective before you report your acreage);
- (2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;
- (3) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;
- (4) Which is destroyed; it is practical to replant to the same type of green peas or the

same varietal group of dry peas; and such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table;

(6) Of volunteer peas;

(7) Planted to a type or variety of peas not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than peas; or

(9) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good irrigation practice for peas at the time of planting; and

(2) Any loss of production caused by failure to carry out a good pea irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain control of the acreage on which the insured peas are grown and which provides for delivery of the peas under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the peas.

##### 3. Report of acreage, share, and practice.

You must report on our form:

- a. All the acreage of peas in the county in which you have a share;
- b. The practice; and
- c. Your share at the time of planting.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peas planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

##### 5. Annual premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee, times the price election, times the

premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience throughout the 1984 crop year under the terms of the Experience Table contained in the pea policy for the 1985 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

- (1) No premium reduction will be retained after the 1989 crop year;
- (2) The premium reduction will not increase because of favorable experience;
- (3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1985 policy;
- (4) Once the loss ratio exceeds .80, no further premium reduction will be applicable, and

(5) Participation must be continuous.

##### 6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

##### 7. Insurance period.

Insurance attaches when the peas are planted and ends at the earliest of:

- a. Total destruction of the peas;
- b. Combining, vining, or removal from the field;
- c. Final adjustment of a loss;
- d. For green peas, the date the green peas should have been harvested unless we give consent to harvest the green peas as dry peas; or
- e. September 15 of the calendar year in which peas are normally harvested.

##### 8. Notice of damage or loss.

a. In case of damage or probable loss:

- (1) You must give us notice if:
  - (a) During the period before harvest, the peas on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) During the period before harvest, the green peas on any unit are damaged and you want our consent to harvest the green peas as dry peas;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the peas and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) If you anticipate a loss on any dry pea unit, you must give us notice:

(a) At least 15 days before the beginning of harvest; or

(b) Immediately, if probable loss is later determined on dry peas. A representative sample of the unharvested dry peas (at least



10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(3) If you anticipate a loss on any green pea unit, you must give us notice:

(a) Not later than 15 days before the beginning of harvest; or

(b) Not later than 48 hours after:

(i) Total destruction of the green peas on the unit; or

(ii) Discontinuance of harvest on the unit prior to completion.

If such notice is not given or if the unharvested acreage is not left unharvested, the appraisal on such acreage will be the production guarantee.

(4) Unless notice has been given under subsection (3) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Harvest of the unit; or

(b) The calendar date for the end of the insurance period.

b. You must obtain written consent from us before you destroy any of the peas which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peas on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peas on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peas to be counted (see section 9e);

(3) Multiplying the remainder by:

(a) Dry peas—the price election; or

(b) Green peas—the lower of

(i) The applicable contract price per pound for the tenderometer or serve size contained in the actuarial table; or

(ii) Your price election for such peas; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) If, due to insurable causes, mature dry pea production does not grade No. 3 or better, or lentils do not grade No. 2 or better, in accordance with the Official United States Standards for dry peas and lentils, the production will be adjusted by:

(a) Dividing the value per pound of such peas by the price per pound for the same variety of dry peas grading No. 3 (No. 2 for lentils); and

(b) Multiplying the result by the number of pounds of such peas. The applicable price for No. 3 dry peas (No. 2 lentils) will be the local market price on the earlier of the day the loss is adjusted or the day the peas were sold.

(2) The pounds of production for harvested green peas will be determined by dividing the dollar amount received from the processor by the contract price for the tenderometer reading or sieve size designated by the actuarial table.

(3) If any acreage of green peas is not timely harvested, the production to count will be the greater of:

(a) The appraised production with no adjustment for quality; or

(b) The dollar amount received from the processor divided by the processor's contract price per pound for the tenderometer reading or sieve size designated by the actuarial table.

(4) If any acreage reported as green peas is harvested as dry peas or we have given consent for the acreage to be harvested as dry peas, the guarantee for such acreage will be reduced 40 percent.

(5) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good pea farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause; and

(c) Any appraised production on unharvested acreage.

(6) Any appraisal we have made on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of peas becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(7) The amount of production of any unharvested peas may be determined on the basis of field appraisals conducted after the end of the insurance period.

(8) If you have elected to exclude hail and fire as insured causes of loss and the peas are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(9) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must

bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the peas are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee



will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peas produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial office may assign a yield for that year. The assigned yield will not exceed the ten year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

- (1) If deducted from an indemnity claim will be the date you sign the claim; or
- (2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and set-off are approved.

e. The cancellation and termination dates are April 15.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of pea crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding pea insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the peas are normally grown and is designated by the calendar year in which the peas are normally harvested.

d. "Combining" (See "Vining")

e. "Harvest" as to any green pea acreage means the vining or combining and acceptance by the processor of the peas from such acreage. "Harvest" as to any dry pea acreage means combining peas which are or could be marketed as dry peas.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who submitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Peas" mean either:

- (1) Canning and freezing peas ("green peas") grown under contract with a processor executed before you report your acreage; or
- (2) All spring-planted smooth green and yellow, and wrinkled varieties of dry peas and lentils ("dry peas").

k. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

l. "Tenant" means a person who rents land from another person for a share of the peas or a share of the proceeds therefrom.

m. "Unit" means all insurable acreage of any one type of green peas or varietal group of dry peas (see the actuarial table) in the county on the date of planting for the crop year:

- (1) In which you have a 100 percent share; or
- (2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peas on such land shall be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units will be determined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share of the bona fide share of any other person having an interest therein.

n. "Vining" or "combining" means separating the peas from the pods.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 20, 1984.

**Diana Moslak,**

*Acting Secretary, Federal Crop Insurance Corporation.*

Dated: February 20, 1985.

Approved by:

**Michael A. Bronson,**

*Acting Manager.*

[FR Doc. 85-4608 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-06-M

## 7 CFR Part 438

[Doc. No. 1862S]

### Canning and Processing Tomato Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), effective for the 1986 and succeeding crop years to provide for: (1)



Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) clarifying the definition of "Loss Ratio"; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** November 1, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule apply are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Page 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility

Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Monday, November 26, 1984, FCIC published a notice of proposed rulemaking in the Federal Register at 49 FR 46409, revising and reissuing the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438), effective for the 1985 and succeeding crop years. Due to an error in scheduling, these regulations will not meet the time constraints involved in notice and public comment; therefore, these regulations will be effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History (APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; Under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language, that although a pilot IYC program is required, a broad IYC program mandatory in nature is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more

farmers to consider crop insurance as a risk transfer program than ever before.

Other than minor changes in language and format, the principal changes in the policy for insuring canning and processing tomatoes are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in Section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.*—Remove the provisions for the transfer of insurance experience and for premium computation when participation has not been continuous. Deletion of the premium adjustment table eliminates the need for these provisions.

4. *Section 9.d.*—Effective for the 1986 and succeeding crop years, allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

5. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

6. *Section 17.g.*—Add a definition for the term "Loss ratio" to clarify its use in Section 5.

In addition to the policy changes FCIC also eliminates the codification of Appendix A. The FCIC service offices will be able to advise producers if this insurance is offered in any county.



**List of Subjects in 7 CFR Part 438**

Crop insurance, Canning and processing tomato.

**Final Rule**

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Canning and Processing Tomato Crop Insurance Regulations (7 CFR Part 438) and delete Appendix A, effective for the 1986 and succeeding crop years, to read as follows:

**PART 438—CANNING AND PROCESSING TOMATO CROP INSURANCE REGULATIONS**

**Subpart—Regulations for the 1986 and Succeeding Crop Years**

**Sec.**

- 438.1 Availability of tomato crop insurance.
- 438.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 438.3 OMB control numbers.
- 438.4 Creditors.
- 438.5 Good faith reliance on misrepresentation.
- 438.6 The contract.
- 438.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

**Subpart—Regulations for the 1986 and Succeeding Crop Years**

**§ 438.1 Availability of tomato crop insurance.**

Insurance shall be offered under the provisions of this subpart on tomatoes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

**§ 438.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for tomatoes which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

**§ 438.3 OMB control numbers.**

The information collection requirements contained in these regulations (7 CFR 438) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

**§ 438.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

**§ 438.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the tomato insurance contract, whenever (a) an insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

**§ 438.6 The contract.**

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the tomato crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the

contract are available at the applicable service offices.

**§ 438.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the tomato crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a tomato contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Canning and Processing Tomato Insurance Policy for the 1986 and succeeding crop years are as follows:

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**Canning and Processing Tomato—Crop Insurance Policy**

(This is a continuous contract. Refer to Section 15.)

**AGREEMENT TO INSURE:** We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.



## Terms and Conditions

## 1. Causes of Loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of the irrigation water supply

due to an unavoidable cause occurring after the beginning of planting;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(5).

b. We will not insure against any loss of production due to:

- (1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good tomato farming practices;
- (3) The impoundment of water by any governmental, public or private dam or reservoir project;
- (4) Failure to market the tomatoes when such failure is not due to an insurable cause; or
- (5) Any cause not specified in section 1a as an insured loss.

## 2. Crop, Acreage, and Share Insured.

a. The crop insured will be tomatoes which are planted for harvest as canning or processing tomatoes, which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be tomatoes planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured tomatoes at the time of planting.

d. We do not insure any acreage:

(1) Which is not grown under a contract with a canner or processor or excluded from the canner or processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(2) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(3) Which is irrigated and an irrigated practice is not provided for by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(4) Which is destroyed, it is practical to replant to tomatoes, but such acreage is not replanted;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree in writing on our form to coverage reduction;

(6) Of volunteer tomatoes;

(7) Planted to a type or variety of tomatoes not established as adapted to the area or excluded by the actuarial table; or

(8) Planted for the development or production of hybrid seed or for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good tomato irrigation practice at the time of planting; and

(2) Any loss of production caused by failure to carry out a good tomato irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to planting.

## 3. Report of Acreage, Share, and Practice.

You must report on our form:

- a. All the acreage of tomatoes in the county in which you have a share;
- b. The practice; and
- c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any tomatoes planted in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

## 4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. The production guarantees are progressive by periods as designated by the actuarial table.

c. Any acreage of tomatoes damaged to the extent that growers in the area generally would not further care for the tomatoes will be deemed to have been destroyed even though the tomatoes continue to be cared for. The production guarantee for such acreage will be the guarantee designated by the actuarial table for the period in which such destruction occurs. The final stage guarantee will apply only to harvested acreage.

d. Coverage level 2 will apply if you have not elected a coverage level.

e. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

## 5. Annual Premium.

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the

premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on your insuring experience through the 1983 crop year under the terms of the Experience Table contained in the tomato policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

- (1) No premium reduction will be retained after the 1989 crop year;
- (2) The premium reduction will not increase because of favorable experience;
- (3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;
- (4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

## 6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

## 7. Insurance period.

Insurance attaches when the tomatoes are planted and ends at the earliest of:

- a. Total destruction of the tomatoes;
- b. Harvest or removal from the field;
- c. Final adjustment of a loss; or
- d. The following dates of the calendar year in which tomatoes are normally harvested:

- (1) California..... October 20
- (2) All other states..... October 10.

## 8. Notice of Damage or Loss.

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) During the period before harvest, the tomatoes on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) You want our consent to put the acreage to another use; or

(c) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the tomatoes and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage is put to another use.

(2) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested tomatoes (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) If an indemnity is to be claimed on any unit notice must be given immediately:



(a) When harvest would normally start if any acreage on the unit is not to be harvested;

(b) After discontinuance of harvest on the unit;

(c) If you are unable to deliver production to the canner or processor; or

(d) When harvest is completed on the unit.

(5) In addition to the notices otherwise required (unless notice has been given under subsection (4) above), if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earlier of:

(a) Total destruction of the tomatoes on the unit; or

(b) The calendar date for the end of the insurance period.

b. The tomato vines on any hand harvested acreage must not be destroyed until inspected by us if an indemnity is to be claimed on the unit.

c. You must obtain written consent from us before you destroy any tomatoes which are not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

#### 9. Claim for Indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the tomatoes on the unit;

(2) Harvest of the unit; or

(3) The calendar date for the end of the insurance period.

b. We will not pay any indemnity unless you:

(1) Establish the total production of tomatoes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of tomatoes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable will count against the production guarantee.

e. The total production (tons) to be counted for a unit will include all harvested and appraised production.

(1) All tomato production marketed and any tomato production which does not meet the quality requirements of the canner or processor contract because it was not timely marketed will be considered production to count.

(2) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good tomato farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, put to another use without our prior written consent, or damaged solely by an uninsured cause;

(c) For acreage which does not qualify for the final period guarantee, any amount of appraised and harvested production in excess of the difference between the final period guarantee and the guarantee applicable to such acreage will be counted; and

(d) All appraised production lost due to uninsured causes will be counted.

(3) Our appraisal on insured acreage for which we have given written consent to be put to another use will be considered production unless such acreage is:

(a) Not put to another use before harvest of tomatoes becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(4) The amount of production of any unharvested tomatoes may be determined on the basis of field appraisals conducted after the end of the insurance period.

(5) If you have elected to exclude hail and fire as insured causes of loss and the tomatoes are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(6) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claims. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is

dissolved after the tomatoes are planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

#### 10. Concealment or Fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer or Right to Indemnity on Insured Share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

#### 12. Assignment of Indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and Access to Farm.

You must keep, for two years after the loss, records of the harvesting, storage, shipment, sale or other disposition of all tomatoes produced on each unit including separate records showing the same information for production from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to the contract.

#### 15. Life of Contract: Cancellation and Termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.



b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster, the Field Actuarial office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

- (1) If deducted from an indemnity will be the date you sign such claim; or
- (2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set-off are approved.

e. The cancellation and termination dates are:

| State            | Cancellation and termination dates |
|------------------|------------------------------------|
| California       | Feb. 15.                           |
| All other states | Apr. 15.                           |

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

#### 16. Contract Changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date for counties with an April 15 cancellation date and by November 30 preceding the cancellation date for all other counties. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of Terms.

For the purposes of canning and processing tomato crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public

inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding tomato insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the tomatoes are normally grown and will be designated by the calendar year in which the tomatoes are normally harvested.

d. "Harvest" or "harvested" as to any insured acreage not deemed to have been destroyed earlier, means severance of tomatoes from the vines and delivery of such tomatoes under your contract with a canner or processor.

e. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Loss ratio" means the ratio of indemnity(ies) to premium(s).

h. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units as herein defined will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our

determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

#### 20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on December 27, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Approved by:

Michael A. Bronson,

Acting Manager.

Dated: February 20, 1985.

[FR Doc. 85-4609 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-08-M

## 7 CFR Part 447

[Docket No. 1858S]

### Popcorn Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby revises and reissues the Popcorn Crop Insurance Regulations (7 CFR Part 447), effective for the 1986 and succeeding crop years to provide for: (1) Changing to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) adding as a cause of loss the unavoidable failure of irrigation water supply; (3) changing the method of computing indemnities when acreage, share or practice is underreported; (4) changing the method of crediting replanting payments; and (5) deleting Appendix A. The intended effect of this rule is to comply with the provisions of Departmental Regulation 1512-1 with regard to review of regulations issued by FCIC for need, currency, clarity, and effectiveness. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**EFFECTIVE DATE:** December 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 447-3325.



**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is August 1, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this final rule applies are: Title-Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On Thursday, December 6, 1984, FCIC published a notice of proposed rulemaking in the *Federal Register* at 49 FR 47617, revising and reissuing the Popcorn Crop Insurance Regulations (7 CFR Part 447), effective for the 1985 and succeeding crop years. Due to an error in scheduling, these regulations did not meet the time constraints involved in notice and public comment; therefore, these regulations will be effective for the 1986 and succeeding crop years. The public was given 30 days in which to submit written comments on the proposed rule.

Comments were received contending that the Actual Production History

(APH) program constitutes a "mandatory Individual Yield Coverage (IYC)" program and is therefore illegal under the terms of the Crop Insurance Act, which required a pilot IYC program. FCIC rejects that contention.

The APH and IYC programs are quite different, although they share common goals. For example: IYC is an optional program; APH is not; IYC is available on a small number of crops; APH will eventually be offered on all insurable crops; Under IYC, coverage levels are adjusted at fixed rates; under APH, both coverages and rates are adjusted; Under IYC, a premium adjustment table is intended to individualize rates; under APH, the premium adjustment table is not necessary because the rates are already individualized under the yield span-rating concept.

It is further clear from the statutory language that, although a pilot IYC program is required, a broad IYC program, mandatory in nature, is not prohibited.

Comments were also received contending that APH should be abandoned or postponed because the APH concept will lead to declining sales. The evidence does not support this contention.

In the only two crops currently being operated under the APH concept—cotton and rice—producer participation is up substantially over previous year levels. Considering the relative incompatibility of cotton and rice to the APH concept in that yield levels have been steadily declining, the increase in participation is even more telling. If anything, APH will encourage more farmers to consider crop insurance as a risk transfer program than ever before.

Other than minor changes in language and format, the principal changes in the popcorn policy are:

1. *Section 1.a.*—Add the failure of irrigation water supply because of unavoidable cause as an insurable cause of loss. This clarifies intent since it is implied as a cause of loss in section 2.e.(2).

2. *Section 5.a.*—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis. Coverages will therefore reflect the actual production history of the crop on the unit. Insureds with good loss experience who are now receiving a premium discount are protected since they will retain any discount under the present schedule through the 1989 crop year or until their loss experience causes them to lose the advantage, whichever is earlier.

3. *Section 5.c.*—Remove the provisions for the transfer of insurance experience and for premium computation when

participation has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

4. *Section 6.*—Specify that the replanting payment will only be applied to payment of the premium if the billing date has passed. In cases when the billing date for a crop has passed on the date the replanting payment is made the replanting payment will be applied to payment of the billed premium. This is a change from the previous practice of applying the replanting payment to the outstanding premium in all cases.

5. *Section 9.d.*—Allow the guarantee only on the acreage, share, or practice reported but credit production on the acreage, share, or practice actually planted if the acreage, share or practice reported results in a premium less than the acreage, share or practice actually planted. When acres are underreported, the production from all acres will be applied against the reported acres in calculating indemnities. This change will reduce the indemnities when acres are underreported and will reduce the complexity of calculations.

6. *Section 9.*—Delete the requirement that a replanting payment be considered an indemnity. This change allows an insured to collect a replanting payment in addition to an indemnity equal to the total liability for the unit in the event of a total loss. Previously, the total of any replanting payment and indemnity could not exceed the FCIC liability on the unit in the event of partial loss.

7. *Section 15.c.*—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the change to mandatory APH.

8. In addition to the policy changes FCIC also eliminates the codification of Appendix A. The FCIC service offices will be able to advise a producer if insurance is offered in any county.

#### List of Subjects in 7 CFR Part 447

Crop insurance, Popcorn.

#### Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby revises and reissues the Popcorn Crop Insurance Regulations (7 CFR Part 447) and deletes Appendix A, effective for the 1986 and succeeding crop years, to read as follows:



## PART 447—POPCORN CROP INSURANCE REGULATIONS

### Subpart—Regulations for the 1986 and Succeeding Crop Years

Sec.

447.1 Availability of popcorn crop insurance.

447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

447.3 OMB control numbers.

447.4 Creditors.

447.5 Good faith reliance on misrepresentation.

447.6 The contract.

447.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

### Subpart—Regulations for the 1986 and Succeeding Crop Years

#### § 447.1 Availability of popcorn crop insurance.

Insurance shall be offered under the provisions of this subpart on popcorn in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

#### § 447.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for popcorn which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

#### § 447.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR 447) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

#### § 447.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

#### § 447.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the popcorn insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation; (1) is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

#### § 447.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the popcorn crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

#### § 447.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the popcorn crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of

the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the *Federal Register* upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a popcorn contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Popcorn Insurance Policy for the 1986 and succeeding crop years are as follows:

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### Popcorn—Crop Insurance Policy

[This is a continuous contract. Refer to Section 15.]

**AGREEMENT TO INSURE:** We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

#### Terms and Conditions

##### 1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Insects;
- (4) Plant disease;
- (5) Wildlife;
- (6) Earthquake;
- (7) Volcanic eruption; or
- (8) Failure of the Irrigation water supply

due to an unavoidable cause occurring after the beginning of planting; unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(6).

b. We will not insure against any loss of production due to:



(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good popcorn farming practices or the grower provisions of the popcorn contract;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) Damage resulting from frost or freeze after the date designated by the actuarial table; or

(5) Any cause not specified in subsection 1a as an insured loss.

**2. Crop, acreage, and share insured.**

a. The crop insured will be popcorn which is planted for harvest, which is grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be popcorn planted on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured popcorn at the time of planting.

**d. We do not insure any acreage:**

(1) Of popcorn not grown under a contract executed with a processor or excluded from the processor contract for, or during, the crop year (The contract must be executed and effective before you report your acreage);

(2) Which is destroyed, it is practical to replant to popcorn, and such acreage is not replanted;

(3) If the farming practices carried out are not in accordance with the farming practices for which the premium rates have been established;

(4) Which is irrigated and an irrigated practice is not provided by the actuarial table unless you elect to insure the acreage as nonirrigated by reporting it as insurable under section 3;

(5) Initially planted after the final planting date contained in the actuarial table, unless you agree, in writing, on our form to coverage reduction;

(6) Of volunteer popcorn;

(7) Planted to a type or variety of popcorn not established as adapted to the area or excluded by the actuarial table;

(8) Planted with a crop other than popcorn; or

(9) Planted for the development or production of hybrid seed or planted for experimental purposes.

e. If insurance is provided for an irrigated practice:

(1) You must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good popcorn irrigation practice at time of planting; and

(2) Any loss of production caused by failure to carry out a good popcorn irrigation practice, except failure of the water supply from an unavoidable cause occurring after the beginning of planting, will be considered as due to an uninsured cause. The failure or breakdown of irrigation equipment or facilities will not be considered as a failure of the water supply from an unavoidable cause.

f. We may limit the insured acreage to any acreage limitations established under any

Act of Congress, if we advise you of the limit prior to planting.

g. An instrument in the form of a "lease" under which you retain possession of the land on which the popcorn is grown and which provides for delivery of the popcorn under certain conditions and at a stipulated price will, for the purpose of this contract, be treated as a contract under which you have the share in the popcorn.

**3. Report of acreage, share, and practice.**

You must report on our form:

a. All the acreage of popcorn planted in the county in which you have a share;

b. The practice; and

c. Your share at the time of planting;

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any popcorn planted in the county. This report must be submitted annually before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

**4. Production guarantees, coverage levels, and prices for computing indemnities.**

a. The production guarantees, coverage levels, and prices for computing indemnities will be contained in the actuarial table.

b. Coverage level 2 will apply if you have not elected a coverage level.

c. You may change the coverage level and price election before the closing date for submitting applications for the crop year, as established by the actuarial table.

**5. Annual premium.**

a. The annual premium is earned and payable at the time of planting. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share at the time of planting.

b. Interest will accrue at the rate of one and one-half percent (1-1/2%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

c. If you are eligible for a premium reduction in excess of 5 percent based on insuring experience through the 1983 crop year under the terms of the Experience Table contained in the policy for the 1984 crop year, you will continue to receive the benefit of that reduction subject to the following conditions:

(1) No premium reduction will be retained after the 1989 crop year;

(2) The premium reduction will not increase because of favorable experience;

(3) The premium reduction will decrease because of unfavorable experience in accordance with the terms of the 1984 policy;

(4) Once the loss ratio exceeds .80, no further premium reduction will be applicable; and

(5) Participation must be continuous.

**6. Deductions for debt.**

Any unpaid amount due us may be deducted from any indemnity payable to you,

or from a replanting payment if the billing date has passed on the date you are paid the replanting payment, or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

**7. Insurance period.**

Insurance attaches when the popcorn is planted and ends at the earliest of:

a. Total destruction of the popcorn;

b. Harvest;

c. Final adjustment of a loss; or

d. December 10 of the calendar year in which the popcorn is normally harvested.

**8. Notice of damage or loss.**

a. In case of damage or probable loss:

(1) You must give us written notice if:

(a) You want our consent to replant

popcorn damaged due to any insured cause (To qualify for a replanting payment, the acreage replanted must be at least the lesser of 10 acres or 10 percent of the insured acreage on the unit);

(b) During the period before harvest, the popcorn on any unit is damaged and you decide not to further care for it or harvest any part of it;

(c) You want our consent to put the acreage to another use; or

(d) After consent to put acreage to another use is given, additional damage occurs.

Insured acreage may not be put to another use until we have appraised the popcorn and given written consent. We will not consent to another use until it is too late to replant. You must notify us when such acreage has been replanted or put to another use.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined, immediate notice must be given. A representative sample of the unharvested popcorn (at least 10 feet wide and the entire length of the field) must remain unharvested for a period of 15 days from the date of notice, unless we give you written consent to harvest the sample.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 30 days after the earliest of:

(a) Total destruction of the popcorn on the unit;

(b) Harvest of the unit; or

(c) December 10 of the crop year.

b. You may not destroy or replant any of the popcorn on which a replanting payment will be claimed until we give consent.

c. You must obtain written consent from us before you destroy any of the popcorn which is not to be harvested.

d. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

**9. Claim for indemnity.**

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the popcorn on the unit;

(2) Harvest of the unit; or

(3) December 10 of the crop year.



(b) We will not pay any indemnity unless you:

(1) Establish the total production of the popcorn on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of popcorn to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Mature popcorn production:

(a) Which otherwise is not eligible for quality adjustment will be reduced .12 percent for each .1 percentage point of moisture in excess of 15.0 percent; or

(b) Which, due to insurable causes, is not of merchantable popcorn quality and is rejected by the processor, will be adjusted by:

(i) Dividing the value per pound of the damaged popcorn by the contract price per pound for undamaged popcorn; and

(ii) Multiplying the result by the number of pounds of such popcorn.

(2) Any production from yellow or white dent corn will be counted as popcorn on a weight basis.

(3) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good popcorn farming practices;

(b) Not less than the guarantee for any acreage which is abandoned or put to another use without our prior written consent or damaged solely by an uninsured cause;

(c) Any appraised production on unharvested acreage.

(4) Any appraisal we have made on insured acreage and given written consent to be put to another use will be considered as production unless such acreage is:

(a) Not put to another use before harvest of popcorn becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause before the acreage is put to another use.

(5) The amount of production of any unharvested popcorn may be determined on the basis of field appraisals conducted after the end of the insurance period.

(6) If you have elected to exclude hail and fire as insured causes of loss and the popcorn

is damaged by hail or fire, appraisals will be made in accordance with Form FCI-78 "Request to Exclude Hail and Fire".

(7) The commingled production of units will be allocated to such units in proportion to their liability on the harvested acreage of each unit.

f. A replanting payment may be made on any insured popcorn replanted after we have given consent and the acreage replanted is at least the lesser of 10 acres or 10 percent of the insured acreage for the unit.

(1) No replanting payment will be made on acreage:

(a) On which our appraisal exceeds 90 percent of the guarantee;

(b) Initially planted prior to the date determined to be reasonable; or

(c) On which a replanting payment has been made during the current crop year.

(2) The replanting payment per acre will be your actual cost per acre for replanting but will not exceed 150 pounds multiplied by the price election, multiplied by your share. If the information reported by you results in a lower premium than the actual premium determined by us, the replanting payment will be reduced proportionately.

g. You must not abandon any acreage to us.

h. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

i. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after the crop is planted for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire from the policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due to us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvest, storage, shipment, sale, or other disposition of all of the popcorn produced on each unit including separate records showing the same information for production for any uninsured acreage. Any persons designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be cancelled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice to the other on or before the cancellation date proceeding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood or other natural disaster,



the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date for the policy on which the amount is due. The date of payment of the amount due:

- (1) If deducted from an indemnity will be the date you sign the claim; or
- (2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such other payment and set off are approved.

e. The cancellation and termination date is April 15.

f. If you die or are judicially declared incompetent, or the insured entity is other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

#### 16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by December 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of terms.

For the purposes of popcorn crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding popcorn insurance in the county.

b. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. "Crop year" means the period within which the popcorn is normally grown and will be designated by the calendar year in which the popcorn is normally harvested.

d. "Harvest" means the completion of removing the grain from the stalk either by hand or machine.

e. "Insurable acreage" means the land classified as insurable by us and shown as such in the actuarial table.

f. "Insured" means the person who submitted the application accepted by us.

g. "Person" means an individual, partnership, association, corporation, estate,

trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

h. "Replanting" means performing the cultural practices necessary to replant insured acreage to popcorn.

i. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

j. "Tenant" means a person who rents land from another person for a share of the popcorn or a share of the proceeds therefrom.

k. "Unit" means all insurable acreage of popcorn in the county on the date of planting for the crop year:

- (1) In which you have a 100 percent share; or
- (2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, fixed commodity payment, or any consideration other than a share in the popcorn on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive Headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with appeal regulations.

#### 20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, D.C., on January 8, 1985.

Diana Moslak,  
Acting Secretary, Federal Crop Insurance Corporation.

Dated: February 20, 1985.

Approved by:  
Michael A. Bronson,  
Acting Manager.

[FR Doc. 85-4610 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-08-M

## Agricultural Stabilization and Conservation Service

### 7 CFR Part 752

#### Water Bank Program

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS) USDA.

**ACTION:** Final rule.

**SUMMARY:** The interim rule which was published at 48 FR 45526 and which amended the regulations governing the Water Bank Program (7 CFR Part 752) is adopted as a final rule with limited amendments. The purpose of these changes to the Water Bank Program regulations is to incorporate certain statutory changes and to update, simplify, and clarify the regulations.

**EFFECTIVE DATE:** February 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Gordell Brown Director, Conservation and Environmental Protection Division, ASCS, United States Department of Agriculture, South Building, Washington, D.C. 20013, telephone (202) 447-6221. The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of implementing the program is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This rule has been reviewed under United States Department of Agriculture (USDA) procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation No. 1512-1 and has been classified as "non major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance program to which this notice applies are: Title-Water Bank Program; Number-10.062; as found in the Catalog of Federal Domestic Assistance.

Information collection requirements contained in this regulation (7 CFR Part 752) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C., Chapter 35 and have been



assigned OMB clearance number 0560-0062.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

The Water Bank Program (WBP) is authorized by sections 2 through 12 of the Water Bank Act, as amended (16 U.S.C. 1301-1311). The purpose of the WBP is to preserve, restore and improve wetlands in important migratory waterfowl, nesting, breeding, and feeding areas and to provide other environmental and agricultural benefits.

On October 6, 1983, an interim rule was published in the *Federal Register* (48 FR 45526) amending the regulations governing the WBP (7 CFR Part 752). The interim rule incorporated certain statutory changes and updated, simplified, and clarified the existing regulations as previously published. A comment period was provided through December 5, 1983.

Three responses were received with respect to the interim rule. All comments were given full consideration in developing this final rule. Five changes in the Interim Rule have been made as a result of the comments that were received. All letters received are on file and available for public inspection in Room 4714, South Building, 14th and Independence Avenue, SW., Washington, D.C. The comments which were received in response to the publication of the Interim Rule and the responses thereto have been categorized by subject to facilitate their review here:

#### Program Objective (Section 752.1)

Comment: One respondent recommended that the reference to waterfowl breeding areas be omitted from this section.

Response: Since the Water Bank Act (Pub. L. 91-559) specifically authorizes the Secretary to enter into agreements with landowners and operators in important migratory waterfowl nesting and breeding areas, this language should not be deleted from the regulations.

#### Definitions (Section 752.2)

Comment: One respondent commented that it was too constraining

to restrict the definition of adjacent land (paragraph (a)) to land which is located within one-quarter mile from the tract which is the subject of WBP agreement.

Response: The decision to use a one-quarter mile limit was based on studies that show that waterfowl successfully nest on lands adjacent to wetlands in distances ranging up to one-half mile. However, due to the variability of the mean distance from the nest to the nearest wetland among species of primary concern and the variation in wetland size during periods of severe drought and significant rainfall, the one-quarter mile limit was determined to be the most desirable distance for purposes of the WBP.

Comment: One respondent commented that the purpose for including provisions for lands adjacent to wetlands to be subject to a WBP agreement is to provide breeding waterfowl with attractive and secure nesting cover. The wetlands are the main source of important food, especially invertebrates, for nesting females. The respondent suggested adding a sentence to the definition of "adjacent land" stating that "in field administration of the WBP, first priority will be given to providing breeding and nesting habitat for migratory waterfowl."

Response: It has been determined that this suggestion has merit. Rather than including this language in the final rule, however, this concept will be included in the daily operating procedures provided to State and county offices to administer the WBP.

Comment: Two respondents commented on expanding the conservation plan definition to include measures needed to preserve wetlands and to protect the designated acreage.

Response: This suggestion has been adopted and a definition of a conservation plan has been included in the final rule.

Comment: Two respondents commented that Circular 39, Wetlands of the United States, has been updated and replaced in large part with the Classification of Wetlands and Deepwater Habitats of the United States. The respondents feel that this new classification should be adopted to define wetlands for purpose of the WBP instead of the older Circular 39 system (paragraph (d) of the interim rule).

Response: The Water Bank Act (Pub. L. 91-559) specifically defines wetlands by reference to Circular 39, Types 1-7. Although the statute also allows the Secretary to designate other wetlands, it is believed that the definition derived from Circular 39, Types 1-7, is adequate for the WBP. If the categories and sub-

categories of the new classification had been ranked as waterfowl habitat, the new system might provide some additional benefits to the WBP. Currently, the new classification adds complexity without providing any benefits for purposes of the WBP.

#### Administration (Section 752.3)

Comment: One respondent commented that the Water Bank Act should provide more direction for coordination among agencies.

Response: This suggestion was incorporated in the final rule by providing that the Secretary of the Interior or his designee will be consulted in order to provide more coordination among agencies.

#### Geographical Applicability (Section 752.4)

Comment: One respondent recommended that designated States in which the program will be applicable be listed in the regulations.

Response: Since funding levels fluctuate annually under the WBP and the changes may result in the WBP being applicable in some States in one year but not another year, it has been determined that it is not desirable to include the names of the States in the final rule.

#### Land Eligible for Designation (Section 752.6)

Comment: One respondent recommended that the provisions of § 752.6(b), which set forth requirements for land which is eligible for designation under the WBP, be expanded to provide that adjacent land must also be essential for the protection of the wetland.

Response: This suggestion has been adopted in the final rule.

Comment: One respondent commented that the provisions of § 752.6(c) which describe land that is not eligible for designation under the WBP appear to be confining and to defeat the purposes of the WBP since they limit the number of opportunities for protection of worthwhile wetlands.

Response: This suggestion has not been adopted in the final rule. Section 752.6(c)(1) restates the requirements of the Water Bank Act. Section 752.6(c)(2), (4), and (5) are related to the Act's policy to assure that land was not acquired solely for the purposes of being included in the program and to preclude the possibility of a producer receiving dual compensation on the same parcel in the same year. Subparagraph (5) seeks to ensure that land subject to an agreement remains a wetland. Last, it is



not the policy of the WBP to make payments to Federal or State governmental entities.

Comment: One respondent recommended that the provisions of § 752.6(c)(4) be revised to include an exception for normal timber harvests.

Response: This suggestion has been adopted in the final rule and § 752.6(c)(4) has been revised accordingly.

#### Use of Designated Acreage (Section 752.7)

Comment: One respondent commented that § 752.7 eliminated controlled burning as a management technique.

Response: Controlled burning is permitted as a management practice if it is specified in the conservation plan initially accepted as part of the WBP application.

Comment: Two respondents commented that it would be desirable to have more direction for coordination among agencies when approving counties for haying on designated WBP acreage during periods of severe drought.

Response: This recommendation has been adopted in this final rule and § 752.7(f) has been revised to indicate that the Secretary of the Interior or his designee will be consulted with respect to haying of designated WBP acreage during periods of severe drought.

#### Water Bank Program Agreement (Section 752.8)

Comment: One respondent commented that more than one WBP agreement per farm should be allowed.

Response: This recommendation has been adopted in this final rule and § 752.8(b) has been revised to allow more than one WBP agreement per farm.

#### List of Subjects in 7 CFR Part 752

Grant programs—Agriculture, Grant programs—Natural resources, Water bank.

#### Final rule

#### PART 752—[AMENDED]

Accordingly, the interim rule published at 48 FR 45526 is adopted as a final rule with the following changes:

1. Section 752.2 is revised by redesignating paragraphs (d) and (e) as (e) and (f), respectively, and by adding a new paragraph (d) to read as follows:

#### § 752.2 Definitions.

(d) "Conservation plan" means a written record of the land user's decisions on the use and management of

the wetland and adjacent areas covered by the agreement. The conservation plan is the basis for the agreement. It includes a schedule of conservation treatment and management required to improve, protect, or restore the wetland and to maintain the wetland and adjacent land as a functional wetland unit for the life of the agreement. Conservation treatment and management of the vegetation for wetland protection, wildlife habitat, or other authorized objectives are consistent with the program objectives and priorities.

2. In § 752.3, paragraph (a) is revised to read as follows:

#### § 752.3 Administration.

(a) The program will be administered under the general supervision of the Administrator, in consultation with the Secretary of the Interior or his designee, and shall be carried out in the field by ASCS State and county committees.

3. In § 752.6, paragraphs (b)(3) and (c)(4) are revised to read as follows:

#### § 752.6 Land eligible for designation.

(b) . . .  
(3) other privately owned land which is adjacent to or within one quarter mile of designated types 1 through 7 wetlands and which is determined by the county committee to be essential for the nesting, breeding, or feeding of migratory waterfowl, or for the protection of wetland.

(c) . . .  
(4) Land which is harvested in the first year of the agreement period prior to being designated, except for land on which timber is harvested in accordance with § 752.7(g).

4. In § 752.7, paragraph (f) is revised to read as follows:

#### § 752.7 Use of designated acreage.

(f) During periods of severe drought, haying of the designated acreage may be approved under specified conditions which are prescribed by the Deputy Administrator in consultation with the Secretary of Interior or his designee.

5. In § 752.8, paragraph (b) is revised to read as follows:

#### § 752.8 Water bank program agreement.

(b) There may be more than one agreement for a farm.

Authority: Sections 2-12, 84 Stat. 1468-1471, as amended (16 U.S.C. 1301-1311).

Signed at Washington, D.C. on February 20, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service

[FR Doc. 85-4615 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-05-M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Part 238

#### Contracts With Transportation Lines; Addition of Challenge International Airlines

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule adds Challenge International Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

EFFECTIVE DATE: February 19, 1985.

FOR FURTHER INFORMATION CONTACT: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC 20536, Telephone: (202) 633-3048.

SUPPLEMENTARY INFORMATION: The Commissioner of Immigration and Naturalization entered into an agreement with Challenge International Airlines on February 19, 1985, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certified that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.



**List of Subjects in 8 CFR Part 238**

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

**PART 238—CONTRACTS WITH TRANSPORTATION LINES****§ 238.3 [Amended]**

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Challenge International Airlines."

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: February 20, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-4696 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-10-M

**8 CFR Part 238****Contracts With Transportation Lines; Addition of Samoa Airlines**

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** This rule adds Samoa Airlines to the list of carriers which have entered into agreements with the Service to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

**EFFECTIVE DATE:** February 19, 1985.

**FOR FURTHER INFORMATION CONTACT:** Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, N.W., Washington, DC, 20536. Telephone: (202) 633-3048.

**SUPPLEMENTARY INFORMATION:** The Commissioner of Immigration and Naturalization entered into an agreement with Samoa Airlines on February 19, 1985, to guarantee passage through the United States in immediate and continuous transit of aliens destined to foreign countries.

The agreement provides for the waiver of certain documentary requirements and facilities the air travel of passengers on international flights while passing through the United States.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because the amendment merely makes

an editorial change to the listing of transportation lines.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certified that the rule will not have a significant impact on a substantial number of small entities.

This order constitutes a notice to the public under 5 U.S.C. 552 and is not a rule within the definition of section 1(a) of E.O. 12291.

**List of Subjects in 8 CFR Part 238**

Airlines, Aliens, Government contracts, Travel, Travel restriction.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

**PART 238—CONTRACTS WITH TRANSPORTATION LINES****§ 238.3 [Amended]**

In § 238.3 Aliens in immediate and continuous transit, the listing of transportation lines in paragraph (b) *Signatory lines* is amended by: Adding in alphabetical sequence, "Samoa Airlines."

(Secs. 103 and 238 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1228))

Dated: February 20, 1985.

Andrew J. Carmichael, Jr.,

Associate Commissioner, Examinations, Immigration and Naturalization Service.

[FR Doc. 85-4697 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-10-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 84-NM-62-AD; Amdt. 39-5007]

**Airworthiness Directives: Boeing Model 767-200 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adds a new airworthiness directive (AD) applicable to Boeing Model 767-200 airplanes which requires a fuel tank low temperature limit of  $-37^{\circ}\text{C}$  ( $-35^{\circ}\text{F}$ ) and replacement of the fuel boost pumps. There have been reports of fuel boost pumps seizing when exposed to low fuel temperatures in service. This action is necessary to preclude loss of all fuel boost pressure and subsequent potential for multiple engine flameout.

**DATES:** Effective March 28, 1985.

**ADDRESSES:** The service bulletin specified in this AD may be obtained

upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124-2207, or may be examined at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Steven P. Clark, Aerospace Engineer, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office; telephone (206) 431-2963. Mailing address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (14 CFR 39.13) to add a new airworthiness directive (AD) applicable to Boeing Model 767-200 airplanes, which requires a fuel tank low temperature limit of  $-37^{\circ}\text{C}$  ( $-35^{\circ}\text{F}$ ) and replacement of the fuel boost pumps, was published in the *Federal Register* on September 11, 1984 (49 FR 35643). The comment period for the proposed amendment closed on October 1, 1984.

Interested persons have been afforded the opportunity to participate in the making of this amendment and due consideration has been given to all relevant data and comments provided. Comments were received from the Air Transport Association of America (ATA), on behalf of the member carriers, and from Sundstrand Corporation, manufacturer of the boost pumps. A discussion of the relevant comments follows.

**Discussion****ATA Comments**

The ATA commented that the installation of a cockpit placard is not necessary because one operator reported that the lowest fuel tank temperatures observed have only been  $-25^{\circ}\text{C}$ , and because another operator already has a fuel temperature limitation of  $-36^{\circ}\text{C}$  in its operational procedures. Although the experience of these two operators suggests that a placard is unnecessary, the certificate limitations for the Boeing Model 767-200 currently allow operation with fuel temperatures as low as three degrees Centigrade above the freezing point of the fuel being used. For the fuels approved for use on the Model 767 airplane, this could result in minimum fuel tank temperatures ranging from  $-37^{\circ}\text{C}$  ( $-35^{\circ}\text{F}$ ) for Jet A fuel, to  $-55^{\circ}\text{C}$  ( $-67^{\circ}\text{F}$ ) for JP-4 fuel. Furthermore, testing done by the manufacturer has shown that pumps



with average shaft-to-bearing clearances may seize at temperatures below 40° C, which presently is within allowable operational limits.

The proposed temperature limit was chosen to provide protection for the greatest number of pumps in service without excessively limiting operations, until the pumps can be replaced. The FAA has determined that the proposed fuel temperature limit is still an acceptable interim action.

The ATA further commented that "if some additional cautionary note to the flight crew is deemed necessary, then some annotation in the Model 767 flight handbook or placard logbook should be sufficient." The FAA considers that a cockpit placard is the most appropriate means to notify the flight crew of this fuel temperature limit because of the temporary nature of the limitation and the variability of application from airplane to airplane, which depends on a given airplane's modification status.

Finally, the ATA expressed concern about the availability of replacement pumps within the proposed compliance schedule. The FAA has been assured that replacement pumps will be available to operators to allow compliance in a timely manner.

#### Manufacturer's Comments

Sundstrand Corporation commented that the proposal is too severe and suggested, instead, a voluntary pump replacement program on an attrition basis based on operator experience, i.e., pumps would be modified whenever the operator determines that the pump causes aircraft circuit breaker trips or during the first shop visit of the pump. In support of its position, Sundstrand submitted an analysis of the 19 reported occurrences and a statistical failure analysis of the probability of an engine being on suction feed based on the reported data.

Specifically, Sundstrand stated that in a review of all 19 reported occurrences of fuel boost pump circuit breaker trips, only 13 individual pumps were involved and only 3 of those pumps had been returned to Sundstrand. When those 3 pumps were returned, none exhibited internal "seizure" or damage, and all met the pressure and flow performance requirements. In addition, Sundstrand contended that the remaining 10 pumps apparently are continuing in service with satisfactory operation. It is FAA's view that 13 pumps are a significant number to be affected by this problem, especially considering that 4 of those were installed on the same airplane.

Next, Sundstrand disagreed with the use of the word "seizure" to describe the failure condition. Sundstrand stated that

this word implies physical damage to the pump and an inability to meet pressure and flow performance requirements. It was suggested that the term "stalling" be used since it is more descriptive. The term "stalling" may be interpreted as a temporary slowing down or stopping of the pump rotor without requiring any crew action to correct the condition, or as a hydrodynamic stalling of the impeller that causes loss of pump efficiency with no reduction of rotor speed. The *American Heritage Dictionary of the English Language, New College Edition*, however, defines the word "seize" to mean "to cohere or fuse with another part as a result of high pressure or temperature, restricting or preventing further motion." The FAA considers this definition of the term "seize" to more precisely describe the failure condition than the word "stall," and has, therefore, retained the use of the term "seize" in this particular document.

A Model 767 airplane on a long duration delivery flight in February 1984 experienced seizures of all four main boost pumps and loss of boost pressure to one engine. Sundstrand stated that, on that particular flight, the occurrences of all four pumps seizing and causing their associated circuit breakers to trip were not simultaneous, and that suction feed was only momentary to one engine, except when the crew elected to pull the circuit breaker of the remaining operating pumps on one side of the airplane. In addition, Sundstrand stated that two of the pumps were restored within five minutes and only one pump would not reset after it initially tripped. Notwithstanding this, the fact remains that one engine was on suction feed for some period of time after pump seizure and the other engine was only one pump failure away from also being on suction feed.

Sundstrand further observed that it was unaware of any occurrences of suction feed-induced engine flameout occurring on Model 767 aircraft. The FAA has received two reports of engine flameout on Model 767 aircraft which were a direct result of suction feed operation. In each case, the affected engine was put on suction feed by fuel system mismanagement, or by unknown causes not related to fuel boost pump cold fuel seizure. The incidents involved both engine models approved for installation on the Model 767 airplane. Even though modern jet transports are normally designed to operate without boost pump pressure throughout most of the aircraft operating envelope, these provisions on most airplanes are intended for emergency operation only and result in degraded engine operation

at high altitudes. High performance turbine engines, during suction feed operation, are very sensitive to throttle manipulations or to environmental effects, such as turbulence at the high altitudes typical for Model 767 operation. An unsafe condition results from the potential for both engines to flame out as a result of the loss of fuel boost pressure caused by exposure to low fuel temperature.

Sundstrand compiled a statistical failure analysis based on the 19 reported occurrences of boost pump seizure, and pump failure rate for other causes, to predict a probability for loss of boost pressure to a single engine of  $1.29 \times 10^{-6}$ . The analysis was used to support Sundstrand's conclusion that the proposed AD action is much too severe. The FAA considers the use of such a probability analysis to be inappropriate where an unsafe condition has been shown to exist by actual service experience. The FAA does not agree with Sundstrand's alternative proposal of voluntary pump replacement and does not consider that the proposal would provide the level of safety needed to correct the unsafe condition.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the proposed amendment, with only minor editorial or clarifying changes.

#### Cost Estimate

It is estimated that 52 U.S. registered airplanes will be affected by this AD, that it will take approximately 8 manhours per airplane to replace all of the boost pumps and 0.5 manhour to install the required placard, and that the average labor cost will be \$40 per manhour. The required placard will be provided without cost to the operators. The replacement pumps may be reworked from the existing stock at a cost of \$2,000 per pump, or purchased new at approximately \$9,600 each for main pumps and \$12,000 each for override pumps. Based on these figures, the total cost of this AD is \$641,680 for reworked pumps or \$3,262,480 for newly purchased pumps.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any,



Model 767-200 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

#### List of Subject in 14 CFR Part 39

Aviation safety, Aircraft.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

**Boeing:** Applies to the Model 767-200 series airplanes certificated in all categories. Compliance is required as indicated unless previously accomplished. To prevent fuel boost pump seizures in flight, as a result of operation with cold fuel, accomplish the following:

A. Within 30 days after the effective date of this AD, install a cockpit placard which limits fuel tank temperature to  $-37^{\circ}\text{C}$  ( $-35^{\circ}\text{F}$ ), in accordance with Boeing Service Bulletin 767-28-14 dated June 20, 1984, or later FAA approved revision.

B. Within one year after the effective date of this AD, replace at least one fuel boost pump in each main fuel tank and at least one fuel boost pump in each center auxiliary fuel tank (if activated) with an improved boost pump, in accordance with Boeing Service Bulletin 767-28-14 dated June 20, 1984, or later FAA approved revision.

C. Within two years after the effective date of this AD, replace all unimproved fuel boost pumps in each main tank and all unimproved fuel boost pumps in each center auxiliary tank (if activated) with improved fuel boost pumps, in accordance with Boeing Service Bulletin 767-28-14 dated June 20, 1984, or later FAA approved revision.

D. The fuel temperature limitation and cockpit placard required by paragraph A., above, may be removed after at least one improved fuel boost pump is installed in each tank location required by paragraph B., above.

**Note.**—The center auxiliary fuel tank boost pumps need not be replaced on airplanes with deactivated center auxiliary fuel tanks (i.e., those not able to be fueled); however, this deviation must be recorded in the permanent aircraft records. All center auxiliary fuel tank boost pumps must be replaced with the improved boost pumps identified in Boeing Service Bulletin 767-28-14 prior to activation of the center auxiliary fuel tank.

E. Alternate means of compliance which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective March 28, 1985.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 109(g) (Revised, Pub. L. 97-499, January 12, 1983); and 14 CFR 11.69)

Issued in Seattle, Washington, on February 15, 1985.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 85-4563 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 85-CE-4-AD, Amendment 39-5004]

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new Airworthiness Directive (AD), AD T85-01-51, applicable to EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER) Models EMB-110P1 and EMB-110P2 airplanes and codifies the corresponding emergency AD telegram dated January 10, 1985, into the Federal Register. This AD requires visual inspection of the aircraft empennage and correction and reporting of unsatisfactory conditions. The National Transportation Safety Board (NTSB) expressed concern that the inspections required by telegraphic AD T84-24-53 may not have been adequate on airplanes that have not been modified per paragraphs d) and e) of AD 83-14-09. The prescribed action will preclude possible failure of the empennage assembly.

**EFFECTIVE DATES:** February 26, 1985, to all persons except those to whom it has already been made effective by telegram from the FAA dated January 10, 1985. **Compliance:** As prescribed in the body of the AD.

**ADDRESSES:** EMBRAER Service Bulletin No. 110-53-019, Change 2, dated April 13, 1984, applicable to this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER) Post Office Box 343-CEP, 12.200, Sao Jose Dos Campos, Sao Paulo, Brazil. A copy of this information is also contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Ben Davis, ACE-120, Manager, Airframe Branch, Atlanta Aircraft Certification

Office, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7407.

**SUPPLEMENTARY INFORMATION:** On January 8, 1985, the NTSB issued four recommendations, A85-01 through A85-04, as a result of its investigation of an accident involving an EMBRAER Model EMB110 series airplane wherein the NTSB found that the airplane's elevators and horizontal stabilizer separated in flight, rendering the airplane uncontrollable. The NTSB expressed concern that the inspections required by telegraphic AD T84-24-53, issued December 9, 1984, may have not been adequate to reveal loose or sheared rivets in the joints of the "C" channels and machined "U" channel in the fuselage bulkhead 33 area on airplanes that have not been modified in accordance with paragraphs d) and e) of AD 83-14-09 (Amendment No. 39-4692). Therefore, the NTSB recommended additional inspections of this area using improved techniques. The FAA reviewed the NTSB's concerns in this regard and agrees that the NTSB's findings raise sufficient questions concerning the integrity of these riveted joints to warrant an additional mandatory inspection within the next 18 hours time-in-service to assure that an unsafe condition does not exist on aircraft of the EMBRAER Models EMB-110P1 or 110P2 design in service. In addition to the visual inspection of elements of the aircraft empennage, the FAA determined that any unsatisfactory conditions such as loose attachments, wear of components, corrosion, cracks or structural deformation must be corrected prior to further flight and reported to the FAA. The FAA determined that this is an unsafe condition that may exist in other airplanes of the same type design, thereby necessitating the AD. It was also determined that an emergency condition existed, that immediate corrective action was required, that notice and public procedure thereon was impractical and contrary to the public interest and that good cause existed to issue an immediately effective AD. Accordingly, on January 10, 1985, telegraphic AD T85-01-51 implementing this action was issued and transmitted to known U.S. owners of EMBRAER Models EMB-110P1 and 110P2 airplanes. Since the unsafe condition described herein may still exist on other EMPRESA BRASILEIRA DE AERONAUTICA S.A. (EMBRAER) Models EMB-110P1 and 110P2 airplanes, the AD is being published in the Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14



CFR Part 39) to make it effective to all persons who did not receive the telegram notification.

The FAA has determined that this regulation is an emergency regulation that is not major rule under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the AD must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained by contacting the Rules Docket at the location identified under the caption "ADDRESSES".

#### List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

#### Adoption of the Amendment

#### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD.

**Embraer:** Applies to Models EMB-110P1 and EMB-110P2 (all serial numbers) airplanes certificated in any category.

**Compliance:** Required within the next 18 hours time-in-service after the effective date of this AD unless either previously accomplished within the past 50 hours time-in-service or modified per paragraphs d) and e) of AD 83-14-09.

To preclude possible structural failure of the empennage assembly, accomplish the following:

- (1) Remove elevator preload springs from cross brace in empennage.
- (2) Remove the cross brace in the empennage that contains the elevator preload springs (rivets will have to be drilled out).
- (3) Gain access to the affected area through the inspection panel forward of bulkhead 33, releasing the elevator and rudder control cables if necessary for good access.
- (4) Position a person in the empennage and inspect for loose, cocked or sheared rivets and signs of fretting in the areas indicated on Figure 2, Page 17, of EMBRAER Service Bulletin No. 110-53-019, Change 2, dated April 13, 1984, using mirror, light, and .010-inch feeler gauge. Attempt to insert feeler gauge between machined "U" channel and reinforcement ribs to determine if gap exists.
- (5) The person stationed in the empennage should place his finger up against the

machined "U" channel resting on reinforcement ribs left and right sides (P/N 4A-1419-07 L/H, P/N 4A-1419-08, P/N 4A-1419-05 L/H and P/N 4A-1419-06) (see above service bulletin) while the horizontal stabilizer is deflected as indicated in (6) below.

(6) Position a person at a horizontal stabilizer tip and attempt to deflect the stabilizer tip up and down approximately 3 inches but no more than 3 inches. The person stationed inside the tail should try to detect any relative movement between structural members. Any movement requires removing all rivets attaching machined "U" channel and replacing them as specified in AD 83-14-09.

(7) Prior to further flight, correct any discrepancies found, reassemble and inspect assembly per AD 83-14-09.

(8) Report completion of inspection and any unsatisfactory conditions within 24 hours to the FAA, Airframe Branch, Atlanta Aircraft Certification Office; Telephone (404) 763-7407. Include in such reports the type and location of discrepancies, specifically identifying the discrepancy, location, material or component.

(9) Aircraft may be flown in accordance with FAR 21.197 to a location where this AD can be accomplished.

(10) An equivalent method of compliance with this AD may be used if approved by the Manager, Atlanta Aircraft Certification Office, ACE-115A, 1075 Inner Loop Road, College Park, Georgia 30337; Telephone (404) 763-7428.

This amendment becomes effective on February 26, 1985, to all persons except those to whom it has already been made effective by telegram from the FAA dated January 10, 1985, and is identified as AD T85-01-51.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); Sec. 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on February 11, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85-4604 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-CE-33-AD; Amendment 39-5005]

**Airworthiness Directives; Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, and SA226-TC Airplanes**

**AGENCY:** Federal Aviation Administration.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to certain serial numbered

Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, and SA226-TC airplanes. This AD supersedes and incorporates certain requirements of AD 83-19-02 and also requires modification of the hydraulic and oxygen systems by replacing certain hydraulic lines and oxygen system components. Recent service history indicates that lines and system components have failed resulting in leakage of flammable fluids and oxygen in the cockpit area which could possibly result in a catastrophic fire. This action will prevent a cockpit fire arising from these conditions and improve the reliability of the hydraulic system by changing tube material from aluminum alloy 5052-0 to aluminum alloy 6061-T6 for certain lines that previously failed from longitudinal fatigue cracking.

**EFFECTIVE DATE:** March 30, 1985.

**Compliance:** On or before December 31, 1985.

**ADDRESSES:** Fairchild Aircraft Corporation Service Bulletins (S/B) 226-29-005 revised September 6, 1984, SB 226-35-003 issued September 6, 1984, and S/B No. 24-021 dated March 21, 1983, applicable to this AD may be obtained from Fairchild Aircraft Corporation, Post Office Box 32486, San Antonio, Texas 78284, Telephone 512-824-9421. Copies of this information are also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Garry Sills, Telephone (817) 877-2073 or Mark Schilling, Telephone (817) 877-2598, Airplane Certification Branch, ASW-150, Southwest Region, FAA, P.O. Box 1689, Fort Worth, Texas 76101.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring modification of the hydraulic and oxygen systems on Fairchild Aircraft Corporation Models SA226-T, SA226-T(B), SA226-AT, and SA226-TC aircraft was published in the Federal Register on Wednesday, October 31, 1984 (49 FR 43707, 43708, and 43709). The proposal resulted from a Fairchild (Swearingen) aircraft fire prior to takeoff on August 27, 1983, and subsequent investigations by the FAA along with Fairchild Aircraft Corporation, of the susceptibility to fatigue cracking of the hydraulic tubing in Model SA226 airplanes. It was also determined that continuously pressurized "plastic" oxygen lines are not appropriate for aircraft installations.

Interested persons have been afforded an opportunity to comment on the



proposal. Four commenters responded. The comments made by the first commenter are as follows:

**Comment:** By following the Service Difficulty Reports and Alerts it was noticed that many hydraulic leaks have occurred on the Model SA226 airplanes that were due to chafing at the clamps where the cushioning had worn off. However, in order to inspect the cushions, the clamps must be removed. The commenter recommended that in addition to requiring hydraulic line changes to also require an inspection of the clamp cushions.

**FAA Response:** The FAA does not agree that the clamp cushions on all of the aircraft be inspected by way of this AD. This AD is intended to correct design deficiencies and not correct maintenance problems. However, a note will be added to this AD that will recommend that the cushions be inspected on those clamps that are opened for the tube modification.

**Comment:** The affected SA226 series airplanes should be grounded since normal hydraulic pressure can exceed the maximum design strength to certain hydraulic lines therefore jeopardizing the safety of the flying public.

**FAA Response:** The tubes in question are .375 O.D. by .035 wall made of 5052-0 aluminum. Acceptable published allowables for the 5052-0 are 9,500 psi yield and 25,000 psi ultimate. The replacement tubes made of 6061-T6 aluminum allowables are 35,000 psi yield and 42,000 psi ultimate. With normal operating pressure for the hydraulic system being 2,000 psi, the stresses calculated for the .375 X .035 tube inside wall are 3,909 psi longitudinal and 9,817 psi for the tangential and 3,909 psi longitudinal and 7,817 psi tangential for the outside wall. However, because the design allowables are conservative and because the SA226 aircraft fleet hydraulic lines are being inspected at 200-hour intervals per AD 83-19-02, the FAA believes that a reasonable level of safety can be assured until the modification is accomplished.

**Comment:** The one-year compliance (December 31, 1985) with Fairchild S/B No. 226-29-005 is unacceptable considering the potential for catastrophic fires as a result of leaking or ruptured hydraulic lines. Since the replacement lines were forecast to be available September 1984, there is not sufficient justification to extend the compliance to December 31, 1985.

**FAA Response:** Grounding of the aircraft is not justified because the conditions which exist tend to allow detection of hydraulic leaks before any critical problems develop. The

compliance period of approximately one year has been used to allow operators flexibility of scheduling maintenance/overhaul and not interrupt the airline's normal day-to-day operations.

The second commenter stated that they were in full support of the proposed modifications and urged early issuance of the AD.

The third commenter suggested that only those portions of S/B No. 226-29-005 that deal with changing the cockpit hydraulic lines should be made mandatory. It was felt that changing the other identified failure-prone hydraulic lines would take too long and not really add to improving the safety of the airplane.

**FAA Response:** The approximately one-year compliance time for the AD should be more than enough time to allow operators to schedule aircraft for maintenance. In addition, part of the intent of this AD is to try to eliminate the total hydraulic failures that have occurred on the SA226 series airplanes which will improve safety.

The fourth commenter had several comments which are as follows:

**Comment:** The commenter took exception that the hydraulic lines could experience a pressure that exceeds the material design properties of the 5052-0 hydraulic lines and suggested that the discussion portion of the AD be changed accordingly.

**FAA response:** As discussed in a previous comment, the calculated stresses do, in fact, exceed material design properties. However, because the design allowables are conservative and because the SA226 aircraft fleet hydraulic lines are being inspected at 200-hour intervals per AD 83-19-02, the FAA believes that a reasonable level of safety can be assured until the modification is accomplished.

**Comment:** The last sentence in the discussion of the cost of compliance with the proposed rule mentions \$5,139 as being so small it thus gives the impression that the FAA considers this amount a trifling sum.

**FAA response:** The cost portion of the discussion is so stated to demonstrate that compliance with the AD will not have a significant economic impact under the criteria of the Regulatory Flexibility Act. The FAA agrees that \$5,139 for AD compliance is not a small cost.

**Comment:** Portions of the proposed rule incorporate repeat material contained in AD 83-19-02 and implies the AD noncompliance is an acceptable state of affairs. The proposal should be changed to remove the repeat material.

**FAA response:** The proposal contains the same inspection as required by AD

83-19-02 because once this AD is adopted, it will supersede AD 83-19-02. The FAA believes the 200-hour repetitive inspections still need to be accomplished until the modifications contained in this AD are accomplished. In addition, the FAA believes the repetitive inspection of the brake reservoir vent on non anti-skid equipped airplanes should continue until such time that a design change will allow elimination of the inspection.

**Comment:** Models SA26T and SA26AT airplanes are included with this AD. None of the modifications are applicable to these airplane models, therefore, they should be deleted from the AD.

**FAA response:** The FAA agrees that Models SA26T and SA26AT airplanes should not be included in this AD. The systems are in fact vastly different from those of the SA226 series airplane. The FAA will remove these airplane models from the effectivity of the AD.

No comments were received on the cost determination other than the one already discussed.

In light of the foregoing the proposal is being adopted as proposed except that it will remove Models SA26T and SA26AT airplanes from the applicability statement and will add a note recommending a check for condition of clamp cushions when replacing hydraulic lines.

The FAA has determined that there are approximately 320 airplanes that will be affected by this AD. The cost of modifying these airplanes in accordance with the AD is estimated to be \$5,139 per airplane. The total cost is estimated to be \$1,593,000 to the private sector. The cost of compliance with this AD for each airplane is so small and the distribution of the airplanes among the entities owning them is such that the cost to any small entities owning these airplanes will not be a significant amount under the criteria of the Regulatory Flexibility Act. Therefore, I certify that this action (1) is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".



**List of Subjects in 14 CFR Part 39**

Air transportation, Aviation safety,  
Aircraft, Safety.

**Adoption of the Amendment****PART 39—[AMENDED]**

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new AD:

**Fairchild:** Applies to Models SA226-T, SA226-T(B), SA226-AT (all serial numbers) and Model SA226-TC (all serial numbers below S/N TC398) airplane certificated in any category.

**Compliance:** Required as indicated, unless already accomplished. To prevent cockpit fires and hydraulic failures by increasing the fatigue resistance of certain hydraulic lines and replacing nonmetallic oxygen lines with metal lines, accomplish the following:

(a) Within the next 25 hours' time-in-service, after the effective date of this AD on airplanes not previously inspected per AD 83-19-02 or within 200 hours time-in-service after the last inspection per AD 83-19-02 and within each 200 hours time-in-service thereafter:

(1) Visually inspect the hydraulic and oxygen lines for leakage in the vicinity of the side panel and behind the instrument panel on both sides of the aircraft. Apply maximum pilot effort to the brake pedals while inspecting the brake lines.

(2) Visually inspect, in the forward-pressure bulkhead area, for hydraulic fluid contamination from the brake reservoir vent.

(3) Before further flight, clean or replace any hydraulic fluid-contaminated structure, material or equipment and replace any lines or tubing which leak or have stress cracks which could cause future leaks found during inspection per paragraphs (a) (1) and (2).

**Note.**—Follow FAA Advisory Circular 43.13-1A, Chapter 10, paragraph 393, and Chapter 8, paragraph 363, when accomplishing these inspections and corrective action required by paragraphs (a) (1), (2), and (3).

(4) Visually inspect the electrical wires in the vicinity of the cockpit side panels and behind the instrument panel on both sides of the aircraft for contact or inadequate clearance between the wires and adjacent components, especially hydraulic and oxygen lines. Determine that the wire bundles near the rudder pedals have adequate separation with the pedals in their extreme positions.

Prior to further flight, add additional supports or reroute, as necessary, to prevent wire contact or chafing which may damage the wire insulation, and clean any contamination from the bundles.

**Note.**—Follow FAA Advisory Circular 43.13-1A, Chapter 11, when accomplishing these inspections and corrective action.

(b) Within the next 25 hours time-in-service after the effective date of this AD unless already accomplished:

(1) Inspect wires and wire terminations within and below the generator control

junction box (J-box) and install phenolic insulator on side of J-box and spiral wrap on wires in accordance with Fairchild Service Bulletin 24-021 dated March 21, 1983.

(2) On Aircraft Models SA226-T (S/Ns T201 through T287); SA226-AT (S/Ns AT001 through AT066); and SA226-TC (S/Ns TC201 through TC247) in which MIL-H-5606 hydraulic fluid is used, drain and purge the main hydraulic and brake system reservoirs and refill these reservoirs with MIL-H-83282 fluid. Change the placards on both reservoirs to specify MIL-H-83282 fluid.

(c) On or before December 31, 1985, on Aircraft Models SA226-T (S/Ns T201 through T291 except T276); SA226-AT (S/Ns AT001 through AT074); SA226-TC (S/Ns TC201 through TC397); SA226-T(B) (S/Ns TB276, TB292 through TB417).

(1) Modify the hydraulic system in accordance with Fairchild Service Bulletin No. 226-29-005 revised September 6, 1984.

**Note.**—Inspect condition of cushion clamps when changing hydraulic lines and change as necessary.

(2) Modify the crew oxygen system in accordance with Fairchild Service Bulletin No. 226-35-003 dated September 6, 1984.

(d) On airplanes modified in accordance with paragraph (c) of this AD.

(1) If equipped with an anti-skid brake system, compliance with inspections required by paragraphs (a) (1), (2), and (4) of this AD is not required.

(2) If not equipped with an anti-skid brake system, compliance with inspections required by paragraph (a) (1) and (4) of this AD is not required.

(e) Airplanes may be flown in accordance with FAR 21.197 to a location where this AD may be accomplished.

(f) The intervals between repetitive inspections required by this AD may be adjusted up to 10 percent of the specified interval to allow accomplishing these inspections concurrent with other scheduled maintenance of the airplane.

(g) An equivalent method of compliance with this AD may be used when approved by the Manager, Aircraft Certification Division, ASW-100, Southwest Regional Office, FAA, Fort Worth, Texas 76101; Telephone (817) 624-4911, Extension 511.

This AD supersedes AD 83-19-02.

This amendment becomes effective on March 30, 1985.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and § 11.89 of the Federal Aviation Regulations (14 CFR 11.89))

Issued in Kansas City, Missouri, on February 14, 1985.

Murray E. Smith,  
Director, Central Region.

[FR Doc. 85-4601 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 84-AAL-1]

**Togiak, AK, Transition Area**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment lowers the base of controlled airspace in the vicinity of Togiak, AK, Airport to provide aircraft conducting flight under instrument flight rules (IFR) with exclusive use of that airspace when the visibility is less than 3 miles, thereby enhancing the safety of such operations.

**EFFECTIVE DATE:** 0901 Gmt, April 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8626.

**SUPPLEMENTARY INFORMATION:****History**

On December 17, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to lower the base of controlled airspace in the vicinity of Togiak, AK, Airport (49 FR 48941). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6 dated January 3, 1984.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations lowers the base of controlled airspace in the vicinity of Togiak, AK, Airport to provide protected airspace for IFR arrivals/departures.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated



impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Transition areas, Aviation safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

#### Togiak, AK [New]

That airspace extending upward from 700 feet above the surface within 9.5 miles east and 4.5 miles west of the 018° bearing from the Togiak NDB (lat. 59°03'53" N., long. 160°22'19" W.) extending from the NDB to 18.5 miles north of the NDB; and within 9.5 miles southeast and 4.5 miles northwest of the 228° bearing from the Togiak NDB extending from the NDB to 23.5 miles southwest of the NDB.

(Secs. 307(a), 313(a), and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348(a), 1354(a), and 1510); Executive Order 10854 (24 FR 9565); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C. on February 15, 1985.

James Burns, Jr.,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-4569 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 84-ANM-31]

#### Alteration of VOR Federal Airway V-254—MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment alters Federal Airway V-254, extending it from Miles City, MT, to Glasgow, MT. This action is expected to help reduce aircraft costs associated with aviation fuel and flight time by providing a more direct route of flight.

**EFFECTIVE DATE:** 0901 G.m.t., April 11, 1985.

**FOR FURTHER INFORMATION CONTACT:** Burton Chandler, Airspace and Air Traffic Rules Branch (ATO-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

#### SUPPLEMENTARY INFORMATION:

##### History

On December 13, 1984, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend VOR Federal Airway V-254 by extending it from Miles City, MT, to Glasgow, MT (49 FR 48568). The proposal was the result of a request by members of the flying public, based on the expectation that the new segment would reduce operating costs involving flight time and fuel. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.8 dated January 3, 1984.

##### The Rule

This amendment to Part 71 of the Federal Aviation Regulations will extend VOR Federal Airway V-254 from Miles City, MT, to Glasgow, MT. The airway segment will reduce operating costs by providing a more direct route between these points. Reference to intersecting radials was deleted from the final rule because it was determined a direct route was satisfactory. Otherwise, this amendment is the same as that proposed in the notice.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

#### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

#### V-254 [Amended]

By removing the words "to Miles City, MT," and by substituting the words "via Miles City, MT; to Glasgow, MT;" (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Issued in Washington, D.C., on February 15, 1985.

John W. Baier,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 85-4568 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 91

[Docket No. 24394; Special Federal Aviation Regulation No. 47]

#### Special Flight Authorization for Noise Restricted Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This Special Federal Aviation Regulation (SFAR) provides for limited issuance of special flight authorizations to conduct certain nonrevenue operations that would otherwise be prohibited by the Part 91, Subpart E, noise restrictions after December 31, 1984. This SFAR is necessary to prevent imposing an economic burden on those operators who have a justified need to make limited operations at U.S. airports and, without this SFAR, would have to petition for a grant of exemption under Part 11.

**DATES:** Effective date of this amendment is February 26, 1985. This rule will terminate on December 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Smith, Noise Policy and Regulation Branch (AEE-110), Noise Abatement Division, Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone: (202) 755-9027.

#### SUPPLEMENTARY INFORMATION:

#### Discussion of Public Comments on the Special Flight Authorization for Noise Restricted Aircraft

These amendments are based on Notice of Proposed Rulemaking No. 84-24 published in the Federal Register on December 21, 1984 (49 FR 49643). Interested persons have been afforded the opportunity to participate in the development of all aspects of this rulemaking by submitting written comments to the public regulatory



docket. The period for submitting comments closed December 31, 1984. All comments received have been reviewed and considered in the issuance of this final rule. This amendment and the reasons for its adoption are the same as those contained in Notice 84-24, and, unless otherwise indicated, the proposals contained in the Notice have been adopted without change.

A total of three public comments were received concerning the granting of the Special Flight Authorization for noise restricted aircraft. All commentors were in general agreement with the bases for Special Flight Authorizations outlined in NPRM 84-24. However, two specific changes were recommended for adoption by the FAA.

All three commentors requested that the FAA expand the special flight authorization to noncomplying foreign operated aircraft which use U.S. air maintenance bases. The intent of the special FAR is to allow operation of noncomplying aircraft for the sole purpose of noise modification or disposition of noncomplying aircraft. The FAA feels any broadening of the special flight authorization would defeat the original intent of the rule.

Two commentors feel that processing of applications for the Special Flight Authorization should be transferred from the Director of Environment and Energy to the FAA's local regional office. The commentors state that the local regional offices which have day to day knowledge of the operations of the air carriers, aircraft leasing and maintenance businesses under their jurisdiction, will be in the better position to expedite the application process.

The FAA does not agree that the review process will be more time consuming if processed at Washington headquarters. The number of applications for special flight authorization are expected to be both minimal and dispersed over a long period of time.

#### Background

Under Part 91 of the Federal Aviation Regulations, on or after January 1, 1985, no person may operate a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds to or from an airport in the United States unless that airplane has been shown to comply with Stage 2 or Stage 3 noise levels under Part 36. This restriction applies to U.S. registered aircraft that have standard airworthiness certificates and foreign registered aircraft that would be required to have a U.S. standard airworthiness certificate in order to conduct the operations intended for the airplane were it registered in the United

States. Under current regulations, authority to conduct operations at U.S. airports on and after January 1, 1985, with noncomplying aircraft can only be obtained by a grant of exemption issued under Public Law 98-473 (enacted October 12, 1984), or Part 11. The FAA is aware that after January 1, 1985, there may be numerous operators desiring to operate noncompliant aircraft in the United States for the purpose of delivering them to foreign purchasers or flying them to a place where they can be modified to comply with Stage 2 or Stage 3 noise levels.

This SFAR provides the regulatory basis for approval of limited special flight authorization for noncomplying aircraft under Part 91, Subpart E. The FAA finds that it is in the public interest to allow limited operations of certain airplanes that do not meet the noise standards of Part 91, Subpart E, for the purpose of delivering the aircraft to a foreign purchaser or flying it to the site of a modifier in the United States who will bring it into compliance with FAR 91.303. With this SFAR, operators will be able to apply for a special flight authorization to allow limited nonrevenue operations at specified U.S. airports.

#### Economic Impact

This rule has minimal economic impact. The rule allows an alternative from the exemption process which imposes greater administrative costs upon operators and the FAA. While the operations are not without some noise costs, these costs can be characterized as trivial, since the number of operations at any one local airport will be extremely low in number.

Even though benefits will exceed costs for this proposal, the FAA finds that the SFAR is not likely to have significant economic impact upon a substantial number of small entities. The basis for this is the very low number of requests which FAA foresees as a result of this rule. This number should not exceed one hundred over the life of the regulation. Accordingly, preparation of a full regulatory evaluation is not required.

#### Good Cause Justification for Immediate Effectivity

Section 553 of the Administrative Procedure Act provides that the publication of a substantive rule shall be made not less than 30 days before its effective date except as otherwise provided by the Agency for good cause found and published with the final rule.

This rule becomes effective immediately upon publication. The FAA finds that immediate implementation of

this SFAR is justified based on the relief it will provide operators of noncomplying airplanes being flown to airports in conjunction with export sales, storage, noise modification to Stage 2 or Stage 3 levels and flights necessary for the sale, lease or other disposition of the airplane. To the extent that such aircraft noise modifications, or export of noncompliant aircraft, would be delayed by prior publication of this amendment, such 30 day notice would be contrary to the public interest.

This rule has minimal economic consequences. Accordingly, for reasons stated earlier the FAA has determined that: (1) The amendment does not involve a major rule under Executive Order 12291; (2) the amendment is not significant nor does it require a full Regulatory Evaluation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it is certified that under the criteria of the Regulatory Flexibility Act the amendment will not have a significant economic impact on a substantial number of small entities. In addition, this rule will have little or no impact on trade opportunities for U.S. firms doing business overseas, or for foreign firms doing business in the United States.

#### List of Subjects in 14 CFR Part 91

Air carriers, Aviation safety, Safety, Aircraft, Aircraft pilots, Air traffic control, Pilots, Airspace, Air transportation, Airworthiness directives and standards.

#### The Final Rule

Accordingly, the FAA amends Part 91, of the Federal Aviation Regulations (14 CFR Part 91) as follows: Special Federal Aviation Regulation (SFAR) #47 will read as follows, effective February 26, 1985.

#### SFAR 47

1. Contrary provisions of Part 91, Subpart E notwithstanding, an operator of a civil subsonic turbojet airplane with maximum weight of more than 75,000 pounds may conduct an approved limited nonrevenue operation in that airplane at U.S. airports when—

- (a) FAA authorization for the operation has been issued under paragraph 3 of this SFAR;
- (b) The operator complies with all conditions and limitations established by this SFAR and the authorization;
- (c) A copy of the authorization is carried aboard the airplane during all operations at U.S. airports; and
- (d) The airplane carries an appropriate airworthiness certificate issued by the country of registration and meets the registration and identification requirements of that country.



2. FAA authorization for the operation of a Stage 1 civil turbojet to or from U.S. airports may be issued for the following purposes:

(a) Flying the airplane to an airport where alterations are to be performed to achieve compliance with Stage 2 or Stage 3 noise levels under Part 36;

(b) Exporting the airplane including flying the airplane to U.S. airports necessary in direct conjunction with the exportation of the airplane;

(c) Operations deemed necessary by the FAA for the sale, lease, or other disposition of the airplane; and

(d) Flying the airplane to a point of storage.

3. An application for a special flight authorization under this Special Federal Aviation Regulation should be submitted to the FAA, Director of the Office of Environment and Energy and include the following information:

(a) The airplane operator;

(b) The airplane make, model, registration number and serial number;

(c) The purpose of the special flight authorization;

(d) All U.S. airports to be included in the special flight authorization and the number of takeoffs and landings at each;

(e) The approximate dates of the requested flight authorization;

(f) The number of people to be aboard the airplane and the function of each; and

(g) Any other information or documentation requested by the Director, Office of Environment and Energy, as necessary to determine whether the application should be approved.

4. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2120-0518.

5. This Special Federal Aviation Regulation terminates on December 31, 1986, unless sooner rescinded or superseded.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, 1423, and 1424); 49 U.S.C. 106(g) (revised; Pub. L. 97-449, January 12, 1983, Pub. L. 98-193, February 18, 1980))

Issued at Washington, D.C. on January 22, 1985.

Donald D. Engen,

Administrator.

[FR Doc. 85-4573 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1015

### Freedom of Information Act; Appeals

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission revises one section of its

Freedom of Information Act regulation to provide that appeals from initial denials of requests for information under the Freedom of Information Act shall be decided by the General Counsel instead of the Commission.

EFFECTIVE DATE: February 26, 1985.

FOR FURTHER INFORMATION CONTACT: Alan H. Schoem or Margot de Ferranti, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, telephone (301) 492-6980.

SUPPLEMENTARY INFORMATION: Under the Commission's current Freedom of Information Act regulation (16 CFR Part 1015), appeals from initial denials of requests for information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, are addressed to the Chairman of the Commission and decided by majority vote of the Commission. 18 CFR 1015.7. Under section 27(b)(9) of the Consumer Product Safety Act, 15 U.S.C. 2076(b)(9), the Commission has the power to delegate functions such as this to "any officer or employee of the Commission."

The Commission is delegating the FOIA appeal function to the General Counsel because it is primarily a legal review to assure compliance with existing law and to assure implementation of existing Commission policy. Decisions of the General Counsel on appeal shall constitute final agency action. In unusual or difficult cases, such as those that present novel policy issues, the General Counsel, in his/her discretion, may refer an appeal to the Commission for determination.

The Commission has not changed 16 CFR 1015.7 in any other material respect. Thus, the authority of the Secretary to reconsider his/her initial denial is retained in 16 CFR 1015.7(c).

Under the new procedure, if, after reconsideration, the Secretary decides to affirm all or part of his/her initial denial, the records and file on appeal will be forwarded to the General Counsel. To assure procedural fairness in handling FOIA appeals, the Office of the General Counsel attorney who advises the Freedom of Information Officer on a particular FOIA will not serve as the legal advisor to the General Counsel on a FOIA appeal involving that request.

In the revised regulation, the Commission has removed references to staff briefing packages previously found at §§ 1015.7 (b) and (c). Staff briefing packages will still be prepared for the General Counsel; however, since preparation of briefing packages is an internal procedure and briefing packages on FOIA appeals are not

public documents, it is not necessary to include discussion of them in the regulation. The Commission will continue to maintain copies of all appeals and all actions on appeals in a public file.

Because this is a rule of internal procedure and practice, the Commission finds, pursuant to 5 U.S.C. 553(b)(A), that the requirements for advance notice and opportunity to comment are inapplicable. Also, because appeals submitted to the Chairman of the Commission will automatically be forwarded to the General Counsel for action, members of the public wishing to file appeals do not require advance notice of this change in procedure. Accordingly, the Commission finds, for good cause, that the requirements of 5 U.S.C. 553(d) for a 30-day delayed effective date are not necessary. Because this revision is not a final rule requiring notice of proposed rule-making, under 5 U.S.C. 553, the provision of 5 U.S.C. 603 requiring a regulatory flexibility analysis do not apply. Finally, because the revision is not a Commission action within the categories of actions listed at 16 CFR 1021.5(b) having a potential for producing environmental effects, neither an environmental assessment nor an environmental impact statement is required.

### List of Subjects in 16 CFR Part 1015

Freedom of Information.

### PART 1015—[AMENDED]

Therefore, pursuant to 5 U.S.C. 552, and 15 U.S.C. 2076(b)(9), the Commission hereby amends 16 CFR Part 1015 by revising § 1015.7 to read as follows:

#### § 1015.7 Appeals from initial denials; reconsideration by the Secretary.

(a) When the Secretary or delegate of the Secretary has denied a request for records in whole or in part, the requester may, within 30 days of its receipt, appeal the denial to the General Counsel of the Consumer Product Safety Commission, attention of the Secretary, Washington, D.C. 20207.

(b) The General Counsel, or the Secretary upon reconsideration, will act upon an appeal within 20 working days of its receipt. The time limitations on an appeal begin to run as of the time an appeal is received by the Office of the Secretary and date stamped.

(c) After reviewing the appeal, the Secretary will reconsider his/her initial denial. If the Secretary upon



reconsideration decides to release any or all of the information requested on appeal, an appeal as to the information released will be considered moot; and the Secretary will so inform the requester and submitter of the information in accordance with §§ 1015.6(a) and 1015.18(b). If the Secretary decides to affirm the initial denial, in whole or in part, the General Counsel will decide the appeal within the 20-day time limit or any extension thereof in accordance with § 1015.5.

(d) The General Counsel shall have the authority to grant or deny all appeals and, as an exercise of discretion, to disclose records exempt from mandatory disclosure under 5 U.S.C. 552(b). In unusual or difficult cases the General Counsel may, in his/her discretion, refer an appeal to the Commissioners for determination.

(e) The General Counsel's action on appeal shall be in writing, shall be signed by the General Counsel, and shall constitute final agency action. A denial in whole or in part of a request on appeal shall set forth the exemption relied upon; a brief explanation, consistent with the purpose of the exemption, of how the exemption applies to the records withheld; and the reasons for asserting it. A denial in whole or in part shall also inform the requester of his/her right to seek judicial review of the Commission's final determination in a United States district court, as specified in 5 U.S.C. 552(a)(4)(B).

(f) If no response is made to the requester within 20 working days or any extension thereof, the requester may consider his/her administrative remedies exhausted and seek judicial relief in a United States district court. When no response can be made within the applicable time limit, the General Counsel shall inform the requester of the reason for the delay, of the date by which a response may be expected, and of the requester's right to seek judicial review as specified in 5 U.S.C. 552(a)(4)(B).

(g) Copies of all appeals and copies of all actions on appeal shall be furnished to and maintained in a public file by the Secretary.

Authority: 5 U.S.C. 552(a)(6)(A); 5 U.S.C. 553; 15 U.S.C. 2076(b)(9).

Sadye E. Dunn,  
Secretary.

February 20, 1985.

[FR Doc. 85-4576 Filed 2-25-85; 8:45 am]

BILLING CODE 6355-01-M

## 16 CFR Parts 1610 and 1611

### Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film; Amendments to Implementing Regulations

AGENCY: Consumer Product Safety Commission.

ACTION: Final rules.

**SUMMARY:** The Consumer Product Safety Commission amends regulations implementing the flammability standards for clothing textiles and vinyl plastic film. The amendments issued below specify: (1) The manner by which the Commission will interpret test results in certain cases; (2) the procedure which the Commission will use to determine whether the standard for clothing textiles or the standard for vinyl plastic film is applicable to a multilayer fabric with an exposed layer of plastic film or coated fabric; and (3) the way by which the Commission will apply the test in the standard for vinyl plastic film to fabrics and related materials used in certain small garments. The Commission also amends labeling requirements in the regulations implementing both standards to make them appropriate for disposable fabrics and garments. The Commission is issuing these amendments to resolve a series of questions which have arisen since the two flammability standards became mandatory for all items of wearing apparel, and fabrics and related materials used or intended for use in wearing apparel. The Commission also withdraws proposals to amend the implementing regulations to specify that full thickness testing is required for all garments made from multilayer fabrics.

**EFFECTIVE DATE:** April 29, 1985.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gomilla, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6400.

**SUPPLEMENTARY INFORMATION:** As originally enacted in 1953, the Flammable Fabrics Act (FFA, Pub. L. 83-88, 67 Stat. 111-15) incorporated the test methods of Commercial Standard 191-53 "Flammability of Clothing Textiles" and Commercial Standard 192-53 "General Purpose Vinyl Plastic Film," and made those tests applicable to all wearing apparel and to all fabrics and related materials used or intended for use in wearing apparel. The tests in those two commercial standards are intended to identify articles of wearing apparel, and fabrics and related materials used or intended for use in wearing apparel, which are dangerous because of rapid

and intense burning. As enacted in 1953, the FFA prohibited the manufacture, distribution, or sale of any article of wearing apparel, or any fabric or related material used or intended for use in wearing apparel, which exhibits "rapid and intense burning" when tested in accordance with the flammability standard for clothing textiles or vinyl plastic film.

In 1967, the FFA was amended by Pub. L. 90-189 to authorize issuance of flammability standards by administrative proceedings. References to CS 191-53 and CS 192-53 no longer appear in the text of the FFA as it is codified at 15 U.S.C. 1191 *et seq.* However, because of a savings clause in the 1967 amendment, provisions of CS 191-53 and CS 192-53 remain in effect as mandatory standards.

CS 191-53 is now incorporated into the Code of Federal Regulations as 16 CFR Part 1610, Standard for the Flammability of Clothing Textiles. CS 192-53 is codified at 16 CFR Part 1611, Standard for the Flammability of Vinyl Plastic Film.

From 1954 until 1973, the FFA and standards issued under that act were enforced by the Federal Trade Commission. In 1973, all functions related to the administration and enforcement of the FFA and standards issued under that act were transferred to the Consumer Product Safety Commission by section 30(b) of the Consumer Product Safety Act (15 U.S.C. 2079(b)).

Over the years that the flammability standards for clothing textiles and vinyl plastic film have been in effect, questions have arisen about their applicability to various kinds of garments, fabrics, and related materials, and about interpretation of test results in certain cases.

Many of these questions arose from the application of the tests in these two standards to disposable diapers with an outer layer of plastic film or coated material. In 1978, the Procter & Gamble Company petitioned the Commission to issue a new flammability standard for disposable diapers, a product manufactured by that firm. (2) \*

In 1980, the Commission voted to deny the petition after concluding that the small number of flammability incidents involving disposable diapers did not warrant the issuance of a separate

\* Numbers in parentheses identify reference documents listed in the Bibliography at the end of this notice. Requests for inspection of any of these documents should be made at the Commission's public reading room, 1111 18th Street, NW., 8th Floor, Washington, D.C., or by calling the Office of the Secretary at (301) 492-6800.



flammability standard for that product. (13) However, the Commission also decided that the regulations implementing the flammability standards for clothing textiles and vinyl plastic film should be amended to specify that when testing disposable diapers with an outer layer of plastic film or coated fabric, the test specimen shall consist of a full thickness from the assembled product, and that any outer layer of plastic film or coated fabric need not be tested separately. (13)

In the Federal Register of May 28, 1981 (46 FR 28665), the Commission initiated a proceeding for the amendment of several provisions of the administrative and enforcement regulations which implement the flammability standards for clothing textiles and vinyl plastic film. (14) One purpose of the proceeding was to propose amendments to those rules which would exempt the outer layer of plastic film or coated fabric used in disposable diapers from any requirement for separate testing, provided that a full thickness of the assembled article passes the test in the applicable standard. The notice of May 28, 1981 also proposed to exempt disposable garments such as disposable diapers from provisions of the rules that require labeling to the effect that such garments will be dangerously flammable if washed or dry cleaned. The proposal also contained a series of changes to the implementing rules to specify the manner by which the Commission would (1) apply the standards to multilayer fabrics, including multilayer fabrics with an outer layer of plastic film or coated material; (2) test small garments; and (3) interpret test results in cases where test specimens either do not ignite, or ignite but extinguish. (14)

After publication of the proposal of May 28, 1981, the Commission received preliminary comments from garment manufacturers and associations representing those manufacturers indicating that one effect of the proposed amendments would be a substantial increase in costs of testing under the standards to the garment industry. Those comments were primarily concerned with certain provisions in the proposed amendments intended to clarify the applicability of the two standards to multilayer fabrics, other than those used in disposable diapers, and to garments, other than disposable diapers, made from such multilayer fabrics.

The Commission had not intended to increase the amount of testing required, and thereby the costs of testing to garment manufacturers, when it proposed the amendments, and had not

anticipated that testing costs would increase for garment manufacturers if the amendments were issued on a final basis. (14)

Rather, the Commission's principal purposes in proposing the amendments had been to modify the standards and implementing regulations as they applied to disposable diapers having an outer layer of plastic film or coating; and to resolve a series of questions about application of the tests in the two standards to various kinds of garments, fabrics, and related material, and the interpretation of test results in certain cases. (14)

After considering these preliminary comments on the proposal of May 28, 1981, the Commission published a second notice in the Federal Register of July 30, 1981 (46 FR 38931) to divide the rulemaking proceeding into two parts. (15) In the notice of July 30, 1981, the Commission announced that it was suspending further action on those parts of the proposal related to the issue of full-thickness testing of garments (other than disposable diapers), which had generated concern within the garment industry about increased costs of testing under the standards. The notice of July 30, 1981, also extended the period for receipt of written comments on all other aspects of the proposal for an additional 30 days. (15)

In the Federal Register of February 24, 1982 (47 FR 8138), the Commission issued final amendments to the regulations implementing the flammability standards for clothing textiles and vinyl plastic film to exempt the outer layer of plastic film or coated fabric from any requirement for separate testing, provided that a full thickness specimen of the assembled article passes the test in the applicable standard. (31) The amendments issued by that notice were codified at 16 CFR 1610.36(f)(3) and 1611.36(f)(3).

In a separate notice published on February 24, 1982 (47 FR 8139), the Commission also extended the comment period on all other aspects of the proposals of May 28, and July 30, 1981, for an additional 90 days. (32) In the second notice, the Commission also stated that it was considering withdrawal of some parts of the proposal of May 28, 1981, concerned with testing of multilayer fabrics, other than multilayer fabrics having an outer layer of plastic film or coated fabric used in disposable diapers, and garments made from such multilayer fabrics, other than disposable diapers. (32)

## Comments on Proposals

In response to the notices of May 28 and July 30, 1981, the Commission received comments from a state fire marshal (16), three manufacturers of disposable diapers (17, 19, 20), one textile manufacturer (18), an association of textile manufacturers (28), and an association of retail dry cleaners and launderers (21). After publication of the notice of February 24, 1982, the Commission received comments from a commercial testing laboratory (34), two manufacturers of disposable diapers (36, 38), an association representing manufacturers of disposable diapers (37), a garment manufacturer (33), an association of garment manufacturers (35), an association representing the cotton industry (39), an association of textile manufacturers (40), an association of retailers (41), a consumer group (42), and a foundation concerned with treatment of burn injuries (43). Some of the latter comments were from firms or associations which had also submitted comments in response to the notices published in 1981.

One comment was concerned with the need for new flammability requirements for certain types of clothing (16); another comment was concerned with the availability of the test apparatus prescribed by the clothing textiles standard from named manufacturers (34). These comments concern matters outside the scope of the amendments proposed in the notices of May 28 and July 30, 1981, and February 24, 1982. If the Commission acts on either comment, it will do so in another notice or proceeding and not in the final amendments issued below.

## Full-Thickness Testing of Garments

As indicated above, after the Commission published the notice of May 28, 1981, it received preliminary comments to the effect that certain provisions of the amendments proposed in that notice would increase the costs of testing under the standard to garment manufacturers. Six of the written comments received in response to the notices of proposal expressed the same view. (20, 33, 35, 39, 40, 41).

In its present form, § 1610.34 of the rules implementing the flammability standard for clothing textiles provides:

*Section 1610.34 Only uncovered or exposed parts of wearing apparel to be tested.*

In determining whether an article of wearing apparel is so highly flammable as to be dangerous when worn by individuals, only the uncovered or exposed part of such article shall be tested according to the applicable procedures set forth in section 4(a) of the act.



In the notice of May 28, 1981, the Commission proposed to revoke § 1610.34, and to make several revisions to existing § 1610.32, including the addition of the following language as § 1610.32(b):

(b) *Uncovered surfaces, exposed surfaces, and full thickness testing of articles of wearing apparel subject to testing.* When testing an article of wearing apparel subject to the Standard, the following parts of the article of wearing apparel shall be individually tested:

- (1) The fabric of the uncovered, or outer, surface of the article of wearing apparel, with the flame applied to the uncovered surface;
- (2) The fabric of any other surface which could be exposed when the article of wearing apparel is worn, with the flame applied to the exposed surface; and
- (3) The full thickness of the article of wearing apparel, with the flame applied to the uncovered or exposed surface(s). (14)

Similar provisions to revoke § 1611.34 and to revise § 1611.32 of the rules implementing the flammability standard for vinyl plastic film were also included in the proposal of May 28, 1981. (14)

Additionally, the notice of May 28, 1981, proposed to add new §§ 1610.36(f) (1) and (2) and 1611.36(f) (1) and (2) to prescribe a procedure for determining whether the flammability standard for clothing textiles or the standard for vinyl film is applicable to a multilayer fabric with an outer layer of film or coated fabric, or to garments made from such fabrics. (14)

Because these additional provisions also contained language concerning full-thickness testing of garments, they too were the subject of objections in the comments under consideration.

In the notice of February 24, 1982, the Commission observed that one way to overcome some of the objections expressed in preliminary comments received on the proposals published in 1981 would be to withdraw the proposals to revoke §§ 1610.34, and 1611.34 as well as the proposals to add new §§ 1610.32(b), 1611.32(b), 1610.36(f) (1) and (2), and 1611.36(f) (1) and (2). In the notice of February 24, 1982, the Commission solicited comments specifically addressed to this alternative. (32)

Five of the eleven comments received after publication of the notice of February 24, 1982, favored such an approach. (33, 35, 39, 40, 41) The principal arguments advanced by these comments were:

- (1) The proposals to revoke §§ 1610.34 and 1611.34 and to add new §§ 1610.32(b) and 1611.32(b) are not necessary in order to modify the standards and implementing regulations to establish an appropriate method for

testing multilayer fabrics with an outer layer of plastic film or coated fabric used or intended for use in disposable diapers, or diapers made from such fabrics. The Commission initiated this proceeding in an effort to develop such a test method after denying a petition requesting promulgation of a separate flammability standard for disposable diapers. (33, 35, 40, 41)

(2) The notices issued in the course of this proceeding did not explain why the proposals concerning full thickness testing of garments (other than disposable diapers) were necessary to protect consumers. They did not specify any instance in which the outer or exposed layer of fabric of a garment would pass the test in the applicable standard, but a full-thickness of the garment would fail such a test. (40, 41)

(3) The proposals in question, if issued on a final basis, would impose additional and unnecessary costs for full-thickness testing of many types of garments. (33, 35, 40, 41)

A comment from Citizens Committee for Fire Protection (CCFP), a public interest group concerned with fire safety, opposed withdrawal of those portions of the proposal of February 24, 1982, to require full-thickness testing of garments. (42) This comment asserted that provisions of the FFA require full-thickness testing of garments which are subject to the clothing textiles standard. This comment also expressed the view that as a practical matter, the Commission should be concerned with the flammability of the finished garment rather than the individual layers of fabric used in its construction in order to protect consumers from burn injuries. CCFP's position on full-thickness testing was endorsed by a separate comment from the Burn Foundation. (43)

The Proposal of May 28, 1981, to amend various sections of the enforcement rules implementing the standards in Parts 1610 and 1611 to require full-thickness testing of garments was based in part on the premise that such testing was required "as a matter of law." (14)

The law applicable to flammability testing of wearing apparel is the Flammable Fabrics Act of 1953 (67 Stat. 111, as amended 68 Stat. 770). Section 3(a) of that act prohibits the manufacture for sale or introduction in commerce of any article of wearing apparel which is "so highly flammable as to be dangerous when worn by individuals." Section 4(a) of that act provides that an article of wearing apparel shall be deemed to be "so highly flammable as to be dangerous when worn by individuals" if "any uncovered or exposed part" of an article of wearing

apparel exhibits "rapid and intense burning" when tested under provisions of Commercial Standard 191-53 for clothing textiles, or fails the test set forth in Commercial Standard 192-53 for vinyl plastic film.

As noted in the proposal of May 28, 1981, sections 2(e) and (f) of the Flammable Fabrics Act of 1953 exempt interlining fabrics used between the outer shell and inner lining of a garment from the requirements of the act. The Flammable Fabrics Act of 1953 contains no other provisions which relate specifically to the manner in which garments shall be tested.

The Commission has also examined the provisions of Commercial Standard 191-53, now codified as the Standard for the Flammability of Clothing Textiles, 16 CFR Part 1610, and Commercial Standard 192-53, now codified as the Standard for the Flammability of Vinyl Plastic Film, 16 CFR Part 1611. Neither standard contains specific provisions which affirmatively require full-thickness testing of garments.

Having reconsidered all provisions of the Flammable Fabrics Act of 1953, the two flammability standards mandated by that act, and having considered all comments concerning full-thickness testing of garments received in response to the Federal Register notices of May 28, and July 30, 1981, and February 24, 1982, the Commission concludes that full-thickness testing of garments is not required as a matter of law.

The comment from CCFP also asserts that the Commission should interpret the standards at 16 CFR Part 1610 and 1611 to require full-thickness testing of garments "as a practical necessity" to protect consumers from serious burn injuries which might otherwise result from dangerously flammable garments. (42)

In the notice of May 28, 1981, proposing revision of various sections of Parts 1610 and 1611 to require full-thickness testing of garments, the Commission observed: "Experience gained in testing under the two standards indicates that failures are more likely to result from testing an uncovered or exposed layer of fabric or film than from testing the full thickness of a multi-layer fabric or an article of wearing apparel." (14)

As noted above, comments urging the Commission to withdraw the proposal concerning full-thickness testing of garments stated that the Commission had not cited any instance in which an outer layer of fabric or film yielded acceptable results when tested under the applicable standard, but a full thickness of the assembled garment



incorporating that fabric or film resulted in failure. The comments from CCFP and the burn Foundation did not provide any test data or other information about the relative flammability of a single layer of film or fabric used as the outer layer of a garment compared to a full-thickness of the garment incorporating such a fabric.

After consideration of test experience gained by the Commission's laboratory in the administration and enforcement of the flammability standards for clothing textiles and vinyl film, and in view of the absence of any additional information about specific instances in which a single layer of fabric has yielded passing results but a garment incorporating that fabric has yielded failing results, the Commission concludes that a requirement for full-thickness testing of all garments subject to the flammability standards for clothing textiles or vinyl plastic film is not necessary in order to adequately protect the public from burn injuries associated with those garments.

Therefore, having concluded that full-thickness testing of garments is not required by law, and is not necessary to adequately protect the public from articles of wearing apparel which may be dangerously flammable, the Commission is withdrawing those portions of the proposal of May 28, 1981, to add new §§ 1610.32(b) and 1611.32(b).

For the same reasons, the Commission also withdraws those portions of the proposal of May 28, 1981, to revoke §§ 1610.34 and 1611.34, and to add new §§ 1610.36(f) (1) and (2) and 1611.36(f) (1) and (2). As proposed in the notice of February 24, 1982, the Commission is adding a note at the end of §§ 1610.34 and 1611.34 to specify the procedure to be followed in determining which standard is applicable to a multilayer fabric with an exposed layer of plastic film or coated fabric, and to reference the special provisions for testing such fabrics when they are used in disposable diapers.

Because the Commission withdraws the proposals to add new §§ 1610.36(f) (1) and (2) and 1611.36(f) (1) and (2), the special provisions for testing multilayer fabric with an exposed layer of plastic film or coated fabric used in disposable diapers are redesignated §§ 1610.36(f) and 1611.36(f) by the amendments issued below.

The notice of May 28, 1981, also proposed to revise the text of existing §§ 1610.32 and 1611.32, and to codify the revised language of those provisions at §§ 1610.32(a) and 1611.32(c). Although the revision of these sections was intended to be editorial rather than substantive, several commenters urged withdrawal of this aspect of the

proposal in their comments concerning full-thickness testing of garments. (33, 35, 39, 40) Because the Commission is withdrawing the proposal to revoke §§ 1610.34 and 1611.34, and to add new §§ 1610.32(b) and 1611.32(b) in response to comments about requirements for full-thickness testing of garments, it is also withdrawing the proposal to revise the text of existing §§ 1610.32 and 1611.32. The text of those sections appears without change in the amendments issued below at §§ 1610.32(a) and 1611.32(c).

#### Interpreting Test Results

As stated above, when the Commission initiated this proceeding, one of its principal purposes was to resolve a series of questions which had arisen over the years about interpretation of test results.

Both standards involve testing of samples of fabric or film. Each sample consists of five individual test specimens. The test in each standard involves the application of a small open flame at the bottom of the specimen and measurement of the time required for the flame to travel the length of the specimen and burn through a stop cord near the top of the specimen. If a specimen does not ignite, or if the specimen ignites but extinguishes before the flame travels through the stop cord, no test result can be assigned to the specimen under either standard.

Since enactment of the FFA in 1953, the agencies responsible for its enforcement have consistently excluded from consideration any specimen which does not ignite, or which ignites but extinguishes, in the averaging of results from specimens of any given sample when testing under the flammability standard for clothing textiles or vinyl plastic film.

However, questions have arisen about interpretation of results from testing when only one specimen of five ignites and burns through the stop cord. Both standards provide that test results from a sample are calculated by "averaging" results obtained from individual specimens. To obtain an "average", results must be available from at least two specimens. A similar problem arises if no specimen within a given sample ignites or burns through the stop cord.

In the notice of May 28, 1981, the Commission proposed to add provisions to §§ 1610.32 and 1611.32 to resolve questions about interpretation of test results when fewer than two specimens in a sample ignite and burn the entire length. (14) This part of the proposal was revised slightly to make technical corrections in the notice of February 24, 1982. (32)

Proposed § 1610.32(c) stated that in order to compute the average time of flame spread for any given sample when testing under the clothing textiles standard, at least two specimens of that sample must ignite and burn through the stop cord. In cases where no specimen ignites or burns through the stop cord, the proposed addition to § 1610.32 stated that the test results would be regarded as passing. If only one specimen of a given sample ignites or burns through the stop cord with passing results, the proposal stated that the test of the sample would be regarded as having yielded passing results.

If one specimen of a sample ignites and burns through the stop cord with failing results, the proposal required the testing of another sample of five specimens. If one or more of the specimens from the second sample ignites and burns through the stop cord, the results of all specimens within the two samples which ignited and burned through the stop cord are averaged to obtain results of that test. If no specimen within the second sample ignites or burns through the stop cord, the proposal stated that the test would be regarded as inconclusive. The proposal stated that the Commission may conduct additional testing of the fabric or garment in question, but results of any inconclusive test shall not be averaged with results from any other test. (14, 32)

The Commission proposed to add similar provisions to the rules implementing the flammability standard for vinyl film at § 1611.32(c). (14, 32)

Comments from two manufacturers of disposable diapers assert that specimens which do not ignite or ignite but extinguish should be taken into account when determining whether a sample passes or fails the test in the applicable standard. (16, 20) These comments state that resistance to ignition and self-extinguishing properties are desirable for fabrics and related material used for wearing apparel. One of these comments recommends that a flame spread time of 60 seconds be assigned to any specimen which does not ignite or ignites but extinguishes. (19)

The comment from CCFP expressed support for those provisions of the proposal concerned with interpretation of test results. This comment observes that the standards for clothing textiles and vinyl plastic film are concerned with the rate of flame spread rather than ease of ignition. (42)

While the Commission agrees that resistance to ignition and self-extinguishing properties are desirable for clothing textiles and related



materials, the test methods in the two standards were not designed to measure either of those characteristics. (44) As noted above, no method exists for including test results from a specimen which does not ignite or ignites but extinguishes in the calculation of an average time of flame spread or average burn rate as required by the standards.

With regard to the suggestion that a flame spread time of 60 seconds be assigned to a specimen which does not ignite or ignites but extinguishes, the Commission observes that in addition to being a purely arbitrary number, such a provision could give rise to cases in which a sample passes the test in the applicable standard after four specimens yield failing results but one specimen does not ignite or ignites but extinguishes. (44)

Comments from a manufacturer of disposable diapers (20), an association of textile manufacturers (28), and an association of retailers (41) object to provisions in the proposal designating certain tests as "inconclusive." One of these comments asserts that the use of the term "inconclusive" may cause confusion as well as product liability problems. (28) Two other comments suggest that if only one specimen in the first sample ignites and burns through the stop cord with failing results, and no specimen in the second sample ignites or burns through the stop cord, the test should be regarded as passing. (20, 41) One of these comments states that such a result would be consistent with other language in the proposal to the effect that if no specimen in the first sample ignites or burns through the stop cord, the test results are regarded as passing. (20)

After consideration of these comments, the Commission declines to make the changes requested. The Commission concludes that in a case where the only specimen of ten ignites and burns through the stop cord with failing results, the outcome could not accurately be described as "passing." At the same time, additional testing may demonstrate that the results under consideration were not representative of the performance of fabric or garment. (44) The Commission concludes that in such circumstances it is reasonable to designate the test results as "inconclusive," with the provision that the Commission will not take any enforcement action on the basis of such a test.

Accordingly, the Commission issues final amendments based on the proposals of May 28, 1981, and February 24, 1982, concerning interpretation of test results in cases where specimens do not ignite or ignite but extinguish. The

substantive provisions are unchanged from the proposal, although some revisions in wording have been made to improve clarity. These provisions are designated as §§ 1610.32(b) and 1611.32(b)(2) in the amendments issued below.

#### Results of Testing Under Standard for Vinyl Film

Another question involving interpretation of test results which the Commission proposed to resolve arises only in testing under the standard for vinyl plastic film. That standard requires that five specimens must be tested lengthwise in the direction of processing of the film, and five specimens must be tested transverse to the direction of processing. That standard states that the results from testing five specimens in each direction shall be averaged. However, the standard does not specify whether the results of the five specimens in each direction are averaged separately, or whether results from all ten specimens are averaged together.

In the notice of May 28, 1981, the Commission proposed to add language to § 1611.32 to state that the results of tests in each direction shall be averaged separately, and if either average exceeds the rate of burning allowed by the standard, the results from the test of that sample shall be regarded as failing.

The comment from CCFP expressed support for the provisions in the proposed amendments relating to averaging of results of testing under the standard for vinyl plastic film. This comment states that consumers would be exposed to an unacceptable hazard if the material fails when tested in either direction because film and other material subject to the standard may be used in garments in any orientation. (42)

A comment from a manufacturer of disposable diapers (17) states that provisions of the proposal relating to averaging of test results would be a departure from traditional practice under the standard for vinyl plastic film, and would make the test in that standard more severe.

In the notice of May 28, 1981, the Commission stated that in its administration of the FFA, it has consistently interpreted the standard for vinyl plastic film to require separate averaging of tests in each direction. (14) The Commission has reviewed the history of the development of the standard, and observes that documents relating to the test method when it was a commercial standard also refer specifically to averaging results of tests in each direction separately. (44)

The Commission notes that the rate of burning for vinyl film may differ significantly depending upon the orientation of the specimen being tested. Averaging all ten specimens together would tend to mask this difference. (44)

For these reasons, the Commission declines to make the change requested by this commenter.

A comment from another manufacturer of disposable diapers (19, 38) recommends calculation of results by averaging the burn times of the five specimens of a given sample and using this average to calculate the rate of burning for the sample. This comment asserts that the suggested change would avoid "contradictory results" which might otherwise occur in some cases. (19, 38) However, the test method in the standard for vinyl plastic film requires calculation of the rate of burning for each individual specimen. See § 1611.4(c)(5). Consequently, the change requested by this commenter has not been included in the amendments issued below.

Provisions specifying that results of testing in each direction shall be averaged separately, and that an average rate of burning in either direction which is in excess of 1.2 inches per second shall be treated as a test failure appear in the amendments issued below at § 1611.32(b)(1).

#### Labeling Required for Products Not Intended To Be Dry Cleaned or Laundered

Existing provisions of §§ 1610.35(a) and 1611.35(a) state that if a fabric or garment subject to the requirements of the flammability standard for clothing textiles would not be dry cleaned or laundered in its ordinary use, samples taken from the fabric or garment are not subject to the requirements for dry cleaning and laundering in §§ 1610.4 (d) and (e) of the standard. However, existing §§ 1610.35(a) and 1611.35(a) provide further that such fabrics and garments must be labeled with the statement: "Fabric will be dangerously flammable if dry cleaned or washed."

The petition requesting development of a new flammability standard for disposable diapers pointed out that the labeling requirements of existing §§ 1610.35(a) and 1611.35(a) were not appropriate for disposable diapers.

While declining to initiate the proceeding requested by the petition, the Commission included provisions in the proposal of May 28, 1981, to modify §§ 1610.35(a) and 1611.35(a) by exempting all items "intended for one-time use" from the requirements for labeling in those sections, in addition to



exempting them from the requirement of the standard for dry cleaning and laundering before testing. In the amendments proposed on May 23, 1981, disposable diapers and disposable surgical gowns in adult sizes were listed as examples of the products covered by the proposed exemption from the labeling requirements of §§ 1610.35(a) and 1611.35(a).

A comment from CCFP expressed agreement in principle with the proposal to dispense with requirements for labeling of disposable garments about flammability hazards that may result from laundering or dry cleaning. However, this comment stated that designating such garments as "intended for one-time use" makes the proposal ambiguous. This comment urged the Commission to describe the garments eligible for the exemption from the labeling requirements as those which are designed and highly likely to be discarded after a single use. (42)

A comment from an association of garment manufacturers urged the Commission to describe the fabrics and garments covered by the exemption as "disposable" rather than "intended for one-time use," and to eliminate the specific examples listed in the proposal. (35) This comment stated that listing examples could have the effect of restricting the scope of the exemption to the particular types of garments cited as examples. Comments from a manufacturer and an association of retailers also recommend elimination of the language listing examples of garments from the text of the amendments. (20, 41)

A comment from a third trade association suggested retention of the existing provisions of §§ 1610.35(a) and 1611.35(a) and the addition of new paragraphs to provide the exemption from the labeling requirements for disposable fabrics and garments. (39)

After consideration of all of these comments, the Commission issues final amendments to §§ 1610.35(a) and 1611.35(a) to exempt disposable fabrics and garments from the labeling requirements in those sections. The term "disposable" has been used rather than "intended for one-time use" to describe the products covered by the exemption, and examples have been removed from the text of the amendments issued below.

A comment from an association of dry cleaners and launderers objected to the wording of the labeling statement required by existing provisions of §§ 1610.35(a) and 1611.35(a) for products which are not intended to be laundered or dry cleaned. (21) As noted above, that statement is: "Fabric will be

dangerously flammable if dry cleaned or washed."

The association stated that the required labeling statement is not true in every case, and submitted test results in support of its position. Those test results show that at least one fabric not customarily dry cleaned or laundered—nylon bridal illusion—will pass the test in the clothing textiles standard after dry cleaning and after laundering. The comment from the association requested revision of § 1610.35 by either:

(1) Changing the provisions of that section to require all items to be tested after dry cleaning and laundering, including those items not usually dry cleaned or laundered in normal use, and specifying that the required labeling statement shall be based on the results of testing after dry cleaning and laundering; or

(2) Revising the text of the labeling statement required by § 1610.35(a) for items not usually dry cleaned or laundered in normal use to "Fabric may be flammable if dry cleaned or washed." (21)

With regard to the first of these suggested revisions of § 1610.35(a), the Commission observes that a requirement for testing of fabrics after dry cleaning and laundering even though such items are not usually dry cleaned or laundered in normal use would add to costs of testing, and would provide information of questionable utility to consumers.

With regard to the alternative change requested by this comment, the Commission agrees that the statement required by existing provisions of §§ 1610.35(a) and 1611.35(a) will not be true in every case, as demonstrated by the test results which accomplished the comment under consideration. For this reason, the Commission has revised the required labeling statement by substituting the word "may" in place of "will."

However, any fabric or material which fails the test in the Standard for clothing textiles for vinyl film is deemed to be "so highly flammable as to be dangerous when worn by individuals" by the terms of the Flammable Fabrics Act of 1953. Additionally, the Commission concludes that elimination of the word "dangerously" could significantly decrease the impact of the label on consumers. For these reasons, the Commission declines to remove the word "dangerously" from the labeling statement required by §§ 1610.35(a)(1) and 1611.35(a)(1) issued below.

A comment from a fabric manufacturer urges revision of § 1610.4(a) of the clothing textiles flammability standard to exempt those

fabrics which are known by the manufacturer not to contain a flame retardant finish from requirements in that section of the standard for laundering and dry cleaning before testing. This comment asserts that the performance of many fabrics which are manufactured without a flame retardant actually improves when they are tested after dry cleaning and laundering. This comment contends that requiring such fabrics to be dry cleaned and laundered before testing adds to their production costs, which are ultimately passed on to consumers.

As noted above, the Flammable Fabrics Act of 1953 made the test method of Commercial Standard 191-53 mandatory, and prohibited the sale of garments and fabrics which exhibit "rapid and intense burning" when tested in accordance with that standard, now codified at 16 CFR Part 1610.

An Appendix to Commercial Standard 191-53, not included in the codification of that standard, states that those provisions of the test method which require certain fabrics to be dry cleaned and laundered before testing (now codified at 1610.4(a)(2)) were not intended to be applicable to cases in which the testing is done by the manufacturer of the fabric and the manufacturer knows that the fabric is made without a flame retardant finish. Because the Appendix clearly states that the provisions for dry cleaning and laundering before testing were not intended to be applicable in the circumstances described in the comment under consideration, the Commission concludes that an amendment of § 1610.4(a)(2) of the standard is not necessary.

The Commission observes that when its staff tests a garment for fabric in accordance with the clothing textiles flammability standard to determine compliance with the Flammable Fabrics Act, the staff usually will not know with certainty that the garment or fabric was made without a flame retardant finish, and will therefore follow those provisions of § 1610.4(a)(2) which require laundering and dry cleaning of certain specimens before testing.

#### Testing Samples From Small Items

The clothing textiles standard provides that the size of test specimens shall be two inches wide and six inches long. See § 1610.4(a)(1). That standard provides further than when testing plain-surface fabrics, the long dimension shall be the one in which the fabric burns most rapidly, as determined by preliminary testing. See § 1610.4(a)(2). When testing fabric samples taken from



some garments in small sizes, it may not be possible to cut specimens which are six inches long from both directions of the garment.

Existing § 1610.35(d) provides that in testing under the clothing textiles standard, fabric which is less than six inches wide shall be tested only in the lengthwise direction.

A similar problem may arise when testing samples of film or coated fabric from some garments in small sizes. The standard for vinyl plastic film requires that specimens must be three inches wide by nine inches long. See § 1611.4(b)(1). As noted above, the standard provides that film shall be tested both lengthwise and transverse to the direction of processing.

However, the regulations implementing the standard for vinyl plastic film contain no provision to deal with testing items of film which are not at least nine inches in both length and width. Instead, § 1611.35(d) simply repeats the language of § 1610.35(d), concerning testing fabrics less than six inches wide under the clothing textiles standard.

In the notice of May 28, 1981, the Commission proposed to revise § 1610.35(d) to make its provisions applicable to "any article of wearing apparel" less than six inches wide, rather than to "a textile fabric which is less than six inches in width."

The notice also proposed revision of § 1611.35 to state that "an item" which is subject to the standard for vinyl film and which is less than nine inches in width shall be tested in a lengthwise direction only.

Comments from a manufacturer of disposable diapers (20), a garment manufacturer (33), an association of garment manufacturers (35), and an association of textile manufacturers (40) urge the Commission to withdraw the proposed revision of § 1610.35(d) and retain the existing language of that section. The objections to the proposed revision of § 1610.35(d) arise from opposition to inclusion of requirements for full-thickness testing of garments in the proposed amendments of the regulations implementing the standards for clothing textiles and vinyl plastic film, discussed above. Because the Commission has concluded that the other provisions of the proposals relating to full-thickness testing of garments should be withdrawn, it is also withdrawing the proposal to revise § 1610.35(d), and is retaining the existing language of that section.

A comment from CCFP objected to the provisions of the proposed amendments to exempt materials and garments subject to the standard for vinyl plastic

film from testing in a crosswise direction if the material or garment is less than nine inches wide. (42) This comment observed that garments in sizes which would be affected by this part of the proposal are worn by infants and small children and states that burn injuries are more critical to infants and young children because of their small size relative to any given size of burn injury. (42) A comment from the Burn Foundation expressed support for CCFP's position, making the additional observations that children aged two to four years old sustain burn injuries more frequently than any other age group, and that rehabilitation of children's burn injuries is complicated by the growth process. (43)

The comment from CCFP suggested that rather than exempt small items of fabric and garment from testing in a particular direction, the Commission should modify the test method in both standards to allow testing of specimens in dimensions smaller than those currently prescribed. This comment also urges modification of both standards to make them progressively more stringent as the size of the specimen decreases. (42)

The suggestions for modification of the test procedure to accommodate smaller specimens and for increasing the stringency of the pass/fail criteria for specimens in smaller sizes go beyond the scope of this proceeding. None of the notices proposing amendments to the enforcement regulations implementing the two standards solicited comment on modification of the test procedure or criteria of the standards for clothing textiles and vinyl plastic film. If the Commission were to make the changes to the standard suggested by CCFP and endorsed by the Burn Standard, it would be required to initiate a proceeding for the amendment of the standards in accordance with section 4 of the FFA.

A comment from a manufacturer of disposable diapers stated that provisions of proposed § 1611.35 concerning tests of small items under the standard for vinyl plastic film do not clearly exempt an irregularly shaped item which is nine inches wide at some points, but not large enough to provide a specimen nine inches by three inches from the requirement for testing in both directions. (19)

The purpose of the proposed amendment of § 1611.35 of the enforcement rules was to interpret the applicability of the standard to samples of materials and garments subject to the standard for vinyl plastic film which are too small to provide test specimens for testing both lengthwise to the direction of processing and transverse to the

direction of processing of the film. To express that intent more clearly, the Commission has modified the text of § 1611.35(d) of the amendments issued below to state that if a specimen cannot be obtained lengthwise to the direction of processing with dimensions of 9 inches by 3 inches from a sample of the material or garments, that sample will not be tested in a direction lengthwise to processing of the film; and if a specimen cannot be obtained transverse to the direction of processing with dimensions of nine inches by three inches from a sample of the material or garment, that sample will not be tested in a direction transverse to processing of the film.

This comment also suggested modification of the specimen holder prescribed by the standard for vinyl plastic film to accommodate thick specimens, such as those which might be taken from disposable diapers. Like the suggestions for modification of the test procedure and criteria in the standard, this one also goes beyond the scope of this proceeding because none of the notices of proposal solicited comment on modification of the apparatus specified in the standards.

#### Impact on Small Businesses

Section 603 of the Regulatory Flexibility Act (RFA, 5 U.S.C. 603) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis of the impact of any proposal on small entities, a term which includes small businesses. Section 605(b) of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the agency certifies that the proposal, if issued on a final basis, will not have a significant economic impact on a substantial number of small entities.

In the notice of May 28, 1981, the Commission stated that it had certified that the proposed amendments of the regulations implementing the standards for clothing textiles and vinyl plastic film would not have a significant economic impact on a substantial number of small businesses if issued on a final basis. (14) In that notice, the Commission observed that a primary purpose of the proposal was to relieve manufacturers of disposable diapers from any requirement to test the outer layer of the product separately from the remainder of the garment. The notice of May 28, 1981, stated that most manufacturers of disposable diapers are subsidiaries of large manufacturers, and that few if any producers of disposable diapers are small businesses. (14)

In the notice of May 28, 1981, the Commission also stated that the other



provisions of the proposal were intended to clarify existing requirements, and were not expected to cause any substantial change in testing practices of persons and firms whose products are subject to the standards. The Commission also expressed the expectation that the proposed amendments would not necessitate any change to fabrics or garments in order to meet the requirements of the applicable standard or standards. (14)

As stated above, several comments expressed objection to various provisions in the proposal because of their perceived effect on costs of testing to manufacturers. In response to those comments, the Commission has withdrawn those parts of the proposal concerning full-thickness testing of garments made from multilayer fabrics.

Having considered all comments concerning economic effects of the proposal on persons and firms, including small businesses, whose products are subject to the standards, and having withdrawn several provisions of the proposed amendments which may have posed unnecessary burdens on industry, the Commission reaffirms its certification that the amendments issued below will not have a significant economic impact on a substantial number of small entities, including small businesses.

#### Environmental Considerations

The Commission's environmental review procedures state at 16 CFR 1021.5(c) that issuance, amendment, or revocation of rules for product performance, certification, or labeling usually has little or no potential for affecting the human environment.

The Commission does not foresee any special or unusual circumstances surrounding the amendments issued below. For this reason, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects

##### 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Records, Textiles, Warranties.

##### 16 CFR Part 1611

Clothing, Consumer protection, Flammable materials, Plastic and plastic products, Records, Textiles, Warranties.

#### Conclusion and Promulgation

Therefore, in accordance with provisions of the Flammable Fabrics Act (15 U.S.C. 1193, 1194) and the Consumer Product Safety Act (15 U.S.C. 2079(b)), the Commission hereby amends the

Code of Federal Regulations, Title 16, Chapter II, Subchapter B, as follows:

#### PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

1. Existing § 1610.32 is redesignated § 1610.32(a) and a new paragraph (b) is added to § 1610.32, to read as follows (although the text of § 1610.32(a) is unchanged by this amendment, it is set forth below for the convenience of readers):

##### § 1610.32 General requirements.

(a) No article of wearing apparel or fabric subject to the act and regulations shall be marketed or handled if such article or fabric, when tested according to the procedure prescribed in section 4(a) of the act, is so highly flammable as to be dangerous when worn by individuals.

(b) The provisions of § 1610.4(g)(7) of the Standard for the Flammability of Clothing Textiles, relating to results of testing, shall be applied to tests of fabrics and articles of wearing apparel subject to the Standard. To compute the average time of flame spread for each set of five specimens, at least two of the specimens must ignite and burn the stop cord for the specimen. However, if fewer than two specimens of any given set of five ignite and burn the entire length of the specimen, test results shall be interpreted according to the provisions of paragraphs (b)(1) through (b)(4) of this section.

(1) If no specimen ignites and burns the stop cord, the results of that test shall be regarded as Class 1 (passing).

(2) If only one of five specimens of a plain surface fabric ignites and burns the stop cord with a time of 3.5 seconds or more, the results of that test shall be regarded as Class 1 (passing).

(3) If only one of five specimens of a raised-fiber surface fabric ignites and burns in less than 4 seconds, but the base does not ignite or fuse, the results of that test shall be regarded as Class 1 (passing). If only one of five specimens of a raised-fiber surface fabric ignites or burns in more than 4 seconds, regardless of whether the base fabric ignites or fuses, the results of that test shall be regarded as Class 1 (passing).

(4) If only one specimen ignites and burns the stop cord in less than 3.5 seconds for plain-surface fabrics or less than 4.0 seconds for raised-fiber surface fabrics where the base fabric ignites or fuses, test another set of five specimens. See § 1610.4(g)(7). Compute the average time of flame spread for all 10 specimens. If two or more of the specimens ignite and burn the stop cord,

average the results from all specimens which ignited and burned the stop cord. See §§ 1610.3(a)(3) and 1610.4(g)(7). If only one of the ten specimens ignites and burns the stop cord, the test is inconclusive. The Commission will take no enforcement action on the basis of that test. The Commission may conduct additional testing of the fabric or article of wearing apparel, but the results of any inconclusive test shall not be averaged with results obtained from any other test.

2. Section 1610.34 is revised by adding the following note (although the text of § 1610.34 is unchanged by this amendment, it is set forth below for the convenience of readers):

##### § 1610.34 Only uncovered or exposed parts of wearing apparel to be tested.

In determining whether an article of wearing apparel is so highly flammable as to be dangerous when worn by individuals, only the uncovered or exposed part of such article of wearing apparel shall be tested according to the applicable procedures set forth in section 4(a) of the act.

**Note.**—If the outer layer of plastic film or plastic-coated fabric of a multilayer fabric separates readily from the other layers, the outer layer shall be tested under Part 1611—Standard for the Flammability of Vinyl Plastic Film. If the outer layer adheres to all or a portion of one or more layers of the underlying fabric, the multi-layered fabric may be tested under either Part 1610—Standard for the Flammability of Clothing Textiles or Part 1611. However, if the conditioning procedures required by § 1610.4(f) of the Standard for the Flammability of Clothing Textiles would damage or alter the physical characteristics of the film or coating, the uncovered or exposed layer shall be tested in accordance with Part 1611.

Plastic film or plastic-coated fabric used, or intended for use as the outer layer of disposable diapers is exempt from the requirements of the standard, provided that a sample taken from a full thickness of the assembled article passes the test in the standard (Part 1610 or Part 1611) otherwise applicable to the outer fabric or film when the flame is applied to the exposed or uncovered surface. See §§ 1610.36(f) and 1610.11(f).

3. Section 1610.35(a) is revised to read as follows:

##### § 1610.35 Procedures for testing special types of textile fabrics under the standard.

(a) *Fabric not customarily washed or dry cleaned.* (1) Except as provided in paragraph (a)(2) of this section, any textile fabric or article of wearing apparel which, in its normal and customary use as wearing apparel would not be dry cleaned or washed,



need not be dry cleaned or washed as prescribed in §§ 1610.4(d) and 1610.4(e) when tested under the standard if such fabric or article of wearing apparel, when marketed or handled, is marked in a clear and legible manner with the statement: "Fabric may be dangerously flammable if dry cleaned or washed." An example of the type of fabric referred to in this paragraph is bridal illusion.

(2) Section 1610.4(a)(4), which requires that certain samples shall be dry cleaned or washed before testing, shall not apply to disposable fabrics and garments. Additionally, such disposable fabrics and garments shall not be subject to the labeling requirements set forth in paragraph (a)(1) of this section.

4. Section 1610.36(f) is revised to read as follows:

**§ 1610.36 Application of act to particular types of products.**

(f) *Multilayer fabric and wearing apparel with a film or coating on the uncovered or exposed surface.* Plastic film or plastic-coated fabric used, or intended for use, as the outer layer of disposable diapers is exempt from the requirements of the standard, provided that a full thickness of the assembled article passes the test in the standard otherwise applicable to the outer fabric or film when the flame is applied to the exposed or uncovered surface.

**PART 1611—STANDARD FOR THE FLAMMABILITY OF VINYL PLASTIC FILM**

1. Existing § 1611.32 is redesignated § 1611.32(a), and a new paragraph (b) is added to § 1611.32, to read as follows (although the text of § 1611.32(a) is unchanged by this amendment, it is set forth below for the convenience of readers):

**§ 1611.32 General requirements.**

(a) No article of wearing apparel or fabric subject to the act and regulations shall be marketed or handled if such article or fabric, when tested according to the procedures prescribed in section 4(a) of the act, is so highly flammable to be dangerous when worn by individuals.

(b)(1) In the application of the requirements of § 1611.3 of the Standard to any item of film, coated fabric, or wearing apparel, compute the average burn rate from five specimens burned transverse to the direction of processing and the average burn rate from an additional five specimens burned transverse or the average burn rate from

the five specimens burned lengthwise to the direction of processing. If either the average burn rate from the five specimens burned lengthwise exceeds 1.2 inches per second, the test results shall be interpreted as a failure.

(2) To compute the average burn rate for each set of five specimens, at least two of the specimens must ignite and burn the stop cord for the specimen. However, if fewer than two specimens of any given set of five specimens ignite and burn the stop cord for the specimen, the test results shall be interpreted according to provisions of paragraphs (b)(2)(i) through (iii) of this section:

(i) If no specimen ignites and burns the stop cord, the test results of that set of specimens shall be regarded as passing.

(ii) If only one specimen of the set of five specimens ignites and burns the stop cord with passing results, the results of that set of specimens will be regarded as passing.

(iii) If only one specimen of the set of five specimens ignites and burns the stop with failing results, test another set of five specimens from the same direction of processing. Compute the average burn rate for all ten specimens in the same direction of processing. If two or more of the 10 specimens ignite and burn the stop cord, average the results from all 10 specimens which ignited and burned the stop cord. If only one of the 10 specimens ignites and burns the stop cord, the test is inconclusive. The Commission will take no enforcement action on the basis of that test. The Commission may conduct additional testing of the article of film, coated fabric, or wearing apparel, but the results of any inconclusive test shall not be averaged with results obtained from any other test.

2. § 1611.34 is revised by adding the following note (although the text of § 1611.34 is unchanged by this amendment, it is set forth below for the convenience of readers):

**§ 1611.34 Only uncovered or exposed parts of wearing apparel to be tested.**

In determining whether an article of wearing apparel is so highly flammable as to be dangerous when worn by individuals, only the uncovered or exposed part of such article of wearing apparel shall be tested according to the applicable procedures set forth in section 4(a) of the act.

**Note.**—If the outer layer of plastic film or plastic-coated fabric of a multilayer fabric separates readily from the other layers, the outer layer shall be tested under Part 1611—Standard for the Flammability of Vinyl Plastic Film. If the outer layer adheres to all or a portion of one or more layers of the

underlying fabric, the multilayered fabric may be tested under either Part 1611 or part 1610—Standard for the Flammability of Clothing Textiles. However, if the conditioning procedures required by § 1610.4(f) of the Standard for the Flammability of Cloth Textiles would damage or alter the physical characteristics of the film or coating, the uncovered or exposed layer shall be tested in accordance with Part 1611.

Plastic film or plastic-coated fabric used, or intended for use, as the outer layer of disposable diapers is exempt from the requirements of the standard, provided that a sample taken from a full thickness of the assembled article passes the test in the standard (Part 1610 or Part 1611) otherwise applicable to the outer fabric or film when the flame is applied to the exposed or uncovered surface. See §§ 1610.36(f) and 1611.36(f).

3. Section 1611.35 (a) and (d) are revised to read as follows:

**§ 1611.35 Testing certain classes of fabric and film.**

(a) *Fabric not customarily washed or dry cleaned.* (1) Except as provided in paragraph (a)(2) of this section, any textile fabric or article of wearing apparel, which, in its normal and customary use as wearing apparel would not be dry cleaned or washed, need not be dry cleaned or washed as prescribed in §§ 1610.4 (d) and (e) when tested under the Standard for the Flammability of Clothing Textiles if such fabric or article of wearing apparel, when marketed or handled, is marked in a clear and legible manner with the statement: "Fabric may be dangerously flammable if dry cleaned or washed." An example of the type of fabric referred to in this paragraph is bridal illusion.

(2) Section 1610.4(a)(4) of the Standard for the Flammability of Clothing Textiles, which requires that certain samples shall be dry cleaned or washed before testing, shall not apply to disposable fabrics and garments. Additionally, such disposable fabrics and garments shall not be subject to the labeling requirements set forth in paragraph (a)(1) of this section.

(d) (1) Items which are subject to the Standard for the Flammability of Vinyl Plastic Film from which a test specimen 3 inches by 9 inches cannot be taken lengthwise to the direction of processing shall not be tested in the lengthwise direction.

(2) Items which are subject to the Standard for the Flammability of Vinyl Plastic Film from which a test specimen 3 inches by 9 inches cannot be taken transverse to the direction of processing



shall not be tested in the transverse direction.

4. Section 1611.36(f) is revised to read as follows:

**§ 1611.36 Application of act to particular types of products.**

(f) *Multilayer fabric and wearing apparel with a film or coating on the uncovered or exposed surface.* Plastic film or plastic-coated fabric used, or intended for use, as the outer layer of disposable diapers is exempt from the requirements of the standard, provided that a full thickness of the assembled article passes the test in the standard otherwise applicable to the outer fabric or film when the flame is applied to the exposed or uncovered surface. (15 U.S.C. 1193, 1194; 15 U.S.C. 2079(b))

Effective date: These amendments shall be effective on April 29, 1985.

Dated: February 20, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

**Bibliography**

1. Transmittal memorandum and attached briefing package concerning petition 79-1, requesting establishment of a flammability standard for disposable diapers, from Elaine A. Tyrrell, OPM, to Commission; 12 pages; May 7, 1980. (The Tabs are listed separately as documents below.)
2. TAB A. Petition for Disposable Diaper Standard from Procter & Gamble Company to Consumer Product Safety Commission, with attachments; 83 pages; November 22, 1978.
3. TAB B. chronology of events associated with petition 79-1; 3 pages.
4. TAB C. memorandum from Beatrice Pitkin, OGC, to Sadye E. Dunn, Secretary, concerning request for issuance of flammability standard for disposable diapers; 2 pages; December 4, 1978.
5. TAB D. memorandum from Allen F. Brauninger, C & E, to Elaine Tyrrell, OPM, concerning response to petition from Procter & Gamble Company, and attached draft Federal Register notice; 34 pages; March 28, 1980.
6. TAB E. memorandum from Patricia A. Fairall, ESEM, to Roy Deppa, OPM, concerning Procter & Gamble petition for disposable diapers; 13 pages; April 16, 1980.
7. TAB F. three documents. (1) Memorandum from Deborah Kale, HIEA, to Elaine A. Tyrrell, OPM concerning petition 79-1 for Commission action to develop a flammability standard for disposable diapers; 2 pages; September 11, 1979. (2) Memorandum from Charles A. Nicholls, HIEA, to Douglas Noble, OPM, concerning petition 79-1; 1 page; November 28, 1979. (3) Memorandum from Bea Harwood and Debbie Kale, HIEA, to Elaine Tyrrell, OPM, concerning petition 70-1; 2 pages; December 12, 1979.
8. TAB G. memorandum from Julia Clones and Eileen Gallagher, HICP, concerning economic considerations related to Procter &

Gamble petition on disposable diapers; 5 pages; October 1, 1979.

9. TAB H. three documents. (1) Letter from Roger B. Bognar, American Paper Institute, Tissue Division, to David Schmeltzer, C & E, concerning petition FP 79-1; 2 pages; June 30, 1979. (2) Letter from Roger B. Bognar, American Paper Institute, Tissue Division, to Sadye Dunn, Secretary, concerning petition 79-1; 1 page; September 6, 1979. (3) Letter from Robert E. Freer, Jr., Kimberly-Clark Corporation, to Sadye E. Dunn, Secretary, concerning petition FP 79-1; 3 pages; January 28, 1980.

10. TAB I. three documents. (1) Log of meeting on July 10, 1979, of Commission staff members with representatives of Procter & Gamble Company; 2 pages. (2) Log of meeting on November 20, 1979, of Commission staff members with representatives of Procter & Gamble Company; 2 pages. (3) Memorandum of telephone conversations on November 8 and 9 of Douglas Noble and Commission staff with James O'Reilly and other representatives of Procter & Gamble Company; 2 pages.

11. Vote sheet and memorandum from Harleigh Ewell, OGC, to the Commission, concerning briefing package on petition FP 79-1 to establish a flammability standard for disposable diapers; 12 pages; May 14, 1980.

12. Memorandum from Douglas Noble, OPM, to the Commission, transmitting additional information related to petition FP 79-1 requesting flammability standard for disposable diapers, with attachments; 87 pages; June 11, 1980.

13. Minutes of Commission meeting of June 12, 1980; 2 pages; June 16, 1980.

14. Federal Register notice, "Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film"; Proposed Interpretations, Clarifications, and Exemption; 8 pages; May 28, 1981.

15. Federal Register notice, "Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film"; Proposed Interpretation, Clarifications, and Exemptions; 4 pages; July 30, 1981.

16. Comment from Robert E. Kelly, State of Montana, concerning proposal of May 28, 1981; 1 page; June 23, 1981.

17. Comment from James T. O'Reilly, Procter & Gamble Company, concerning proposal of May 28, 1981; 3 pages; June 30, 1981.

18. Comment from Arnold M. Snooke, Burlington Industries, Inc., concerning proposals of May 28 and July 20, 1981; 2 pages; August 18, 1981.

19. Comment from Robert Freer, Jr., Kimberly-Clark Corporation concerning proposals of May 28, and July 30, 1981; 4 pages; August 31, 1981.

20. Comment from E. E. Hinds, Kendall Company, concerning proposals of May 28, and July 30, 1981; 5 pages; August 17, 1981.

21. Comment from William E. Fisher, International Fabricare Institute, on proposals of May 28, and July 30, 1981; 4 pages; August 31, 1981.

22. Request from Fred Shippee, American Apparel Manufacturers Association, for extension of comment period; 2 pages; August 24, 1981.

23. Request from Peter M. Phillipps, Levi, Strauss & Co., for extension of comment period; 1 page; August 28, 1981.

24. Request from H. Adams, Jr., Man-Made Fiber Producers Association, Inc., for extension of comment period; 1 page; August 27, 1981.

25. Request from O'Jay Niles, American Textile Manufacturers Association, for extension of comment period; 1 page; August 28, 1981.

26. Request from Robert B. Cleaver, National Cotton Council of America, for extension of comment period; 2 pages; August 27, 1981.

27. Letter from James T. O'Reilly, Procter & Gamble Company, to Harleigh Ewell, OGC, concerning request for extension of comment period; 1 page; August 28, 1981.

28. Comment from American Textile Manufacturers Institute, Inc. concerning proposals of May 28, and July 30, 1981; 1 page; November 23, 1981.

29. Memorandum concerning proposals of May 28, and July 30, 1981, for amendment of regulations implementing flammability standards for clothing textiles and vinyl plastic film, from Allen F. Brauninger, OGC to Commission, with attachments; 50 pages; January 13, 1982.

30. Vote sheet and memorandum concerning proposed amendments of regulations implementing flammability standards for clothing textiles and vinyl plastic film, from Allen F. Brauninger, OGC to Commission; 7 pages; January 25, 1982.

31. Federal Register notice, "Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film; Amendments to Implementing Regulations"; 3 pages; February 24, 1982.

32. Federal Register notice, "Standards for the Flammability of Clothing Textiles and Vinyl Plastic Film; Extension of Time for Receipt of Written Comments on Proposed Amendments to Implementing Regulations"; 6 pages; February 24, 1982.

33. Comment from Maldenform, Inc. concerning proposals of February 24, 1982; 1 page; April 26, 1982.

34. Comment from the Govmark Organization, Inc. concerning proposals of February 24, 1982; 1 page; March 4, 1982.

35. Comment from American Apparel Manufacturers Association concerning proposals of February 24, 1982; 4 pages; May 24, 1982.

36. Comment from the Procter & Gamble Company concerning proposals of February 24, 1982; 1 page; May 21, 1982.

37. Comment from American Paper Institute, Inc. concerning proposals of February 24, 1982; 1 page; May 21, 1982.

38. Comment from Kimberly-Clark Corporation concerning proposals of February 24, 1982; 4 pages; May 24, 1982.

39. Comment from the National Cotton Council of America concerning proposals of February 24, 1982; 3 pages; May 18, 1982.

40. Comment from American Textile Manufacturers Institute, Inc. concerning proposals of February 24, 1982; 2 pages; May 25, 1982.



41. Comment from National Retail Merchants Association concerning proposals of February 24, 1982; 4 pages; May 25, 1982.

42. Comment from Citizens Committee for Fire Protection concerning proposals of February 24, 1982; 3 pages; April 30, 1984.

43. Comment from Burn Foundation concerning proposals of February 24, 1984; 1 page; May 4, 1984.

44. Transmittal memorandum and attached briefing package concerning proposals of February 24, 1982, to amend regulations implementing flammability standards for clothing textiles and vinyl plastic film, from James Sharman, OPM, to Commission; 157 pages; December 6, 1984.

[FR Doc. 85-4575 Filed 2-25-85; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 430, 436, and 440

[Docket No. 85N-0012]

#### Antibiotic Drugs; Sterile Amdinocillin

**AGENCY:** Food and Drug Administration.  
**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile amdinocillin. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

**DATES:** Effective February 28, 1985; comments, notice of participation, and request for hearing by March 28, 1985; data, information, and analyses to justify a hearing by April 29, 1985.

**ADDRESS:** Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

**SUPPLEMENTARY INFORMATION:** FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new antibiotic drug, sterile amdinocillin. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations

should be amended in Parts 430, 436, and 440 (21 CFR Parts 430, 436, and 440) to provide for the inclusion of accepted standards for the product.

The agency has determined pursuant to 21 CFR 25.24(b)(22) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

#### List of Subjects

##### 21 CFR Part 430

Administrative practice and procedure, Antibiotics.

##### 21 CFR Part 436

Antibiotics.

##### 21 CFR Part 440

Antibiotics, Penicillin.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Parts 430, 436, and 440 are amended as follows:

#### PART 430—ANTIBIOTIC DRUGS; GENERAL

##### 1. Part 430 is amended:

a. In § 430.5 by adding new paragraphs (a)(84) and (b)(86) to read as follows:

##### § 430.5 Definitions of master and working standards.

(a) \* \* \*

(84) *Amdinocillin*. The term "amdinocillin master standard" means a specific lot of amdinocillin that is designated by the Commissioner as the standard of comparison in determining the potency of the amdinocillin working standard.

(b) \* \* \*

(86) *Amdinocillin*. The term "amdinocillin working standard" means a specific lot of a homogeneous preparation of amdinocillin.

(b). In § 430.6 by adding new paragraph (b)(86) to read as follows:

##### § 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

(b) \* \* \*

(86) *Amdinocillin*. The term "microgram" applied to amdinocillin means the amdinocillin activity

(potency) contained in 1.004 micrograms of the amdinocillin master standard.

#### PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended by adding new § 436.353 to read as follows:

##### § 436.353 High-performance liquid chromatographic assay for amdinocillin.

(a) *Apparatus*. A suitable high-performance liquid chromatograph equipped with:

(1) A suitable detection system specified in the monograph for the drug being tested;

(2) A suitable recording device of at least 25-centimeter deflection;

(3) A suitable chromatographic data managing system; and

(4) An analytical column, 3 to 30 centimeters long, packed with a material as defined in the monograph for the drug being tested; and if specified in that monograph, the inlet of this column may be connected to a guard column, 3 to 5 centimeters in length, packed with the same material of 40 to 60 micrometers particle size.

(b)(1) *Procedure*. Perform the assay and calculate the drug content using the temperature, instrumental conditions, and calculations specified in the monograph for the drug being tested with a flow rate not to exceed 2.0 milliliters per minute. Use a detector sensitivity setting that gives a peak height for the working standard that is at least 50 percent of scale with typical chart speed of not less than 2.5 millimeters per minute. Use the apparatus described in paragraph (a) of this section; and the reagents and working standard and sample solutions described in the monograph for the drug being tested. Equilibrate and condition the column by passage of 10 to 15 void volumes of mobile phase followed by five replicate injections of the same volume (between 10 and 20 microliters) of the working standard solution. Allow an operating time sufficiently long to obtain satisfactory separation and elution of the expected components after each injection. Record the peak responses and calculate the prescribed system suitability requirements as follows:

(2) *System suitability test*. Using the apparatus and procedure described in this section, test the chromatographic system for assay as follows:

(i) *Tailing factor*. Calculate the tailing factor (*T*), from distances measured along the horizontal line at 5 percent of the peak height above the baseline, as follows:



$$T = \frac{W_{0.05}}{2f}$$

where:

$W_{0.05}$  = Width of peak at 5 percent height; and

$$\underline{n} = 5.545 \left[ \frac{\bar{t}_R}{\bar{w}_h} \right]^2$$

where:

$\underline{n}$  = Efficiency, as number of theoretical plates for column;

$\bar{t}_R$  = Retention time of solute;

$\bar{w}_h$  = Peak width at half-height; and

$W$  = Width of the base of the peak obtained by extrapolating the relatively straight sides of the peak to the baseline.

(iii) *Resolution factor*. Calculate the resolution factor ( $R$ ) as follows:

$$R = \frac{2(t_{R2} - t_{R1})}{w_1 + w_2}$$

where:

$t_{R2}$  = Retention time for a solute eluting after  $i$  ( $t_{R2}$  is larger than  $t_{R1}$ );

$t_{R1}$  = Retention time for any solute;

$w_1$  = Width of peak at baseline for any solute; and

$w_2$  = Width of peak at baseline for any solute eluting after  $i$ .

(iv) *Coefficient of variation (relative standard deviation)*. Calculate the coefficient of variation ( $S_x$  in percent) as follows:

$$\frac{S_x}{\bar{X}} = \frac{100}{\bar{X}} \left[ \frac{\sum_{i=1}^N (X_i - \bar{X})^2}{N - 1} \right]^{1/2}$$

where:

$\bar{X}$  = the mean of  $N$  individual measurements of  $X_i$ .

If the complete operating system meets the system suitability requirements of the monograph for the drug being tested, proceed as described in paragraph (b)(1) of this section, using

$f$  = Horizontal distance from point of ascent to a point coincident with maximum peak height.

(ii) *Efficiency of the column*. Calculate the number of theoretical plates ( $\underline{n}$ ) of the column by either of the following formulas:

$$\underline{n} = 16 \left( \frac{\bar{t}_R}{\bar{W}} \right)^2$$

the sample solution in lieu of the working standard solution.

#### PART 440—PENICILLIN ANTIBIOTIC DRUGS

3. Part 440 is amended:

a. By adding § 440.2a to read as follows:

##### § 440.2a Sterile amdinocillin.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity*. Sterile amdinocillin is 4-thia-1-azabicyclo[3.2.0]heptane-2-carboxylic acid, 6-[[[hexahydro-1*H*-azepin-1-yl]-methylene]amino]-3,3-dimethyl-7-oxo-, [2*S*-2*a*,5*a*,6*β*]-. It is so purified and dried that:

(i) If the amdinocillin is not packaged for dispensing, its amdinocillin content is not less than 950 micrograms and not more than 1,050 micrograms of amdinocillin per milligram on an anhydrous basis. If the amdinocillin is packaged for dispensing, its amdinocillin content is not less than 950 micrograms and not more than 1,050 micrograms of amdinocillin per milligram on an anhydrous basis and also, each container contains not less than 90 percent and not more than 120 percent of the number of milligrams of amdinocillin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) Its moisture content is not more than 0.5 percent.

(v) Its pH in an aqueous solution containing 100 milligrams of amdinocillin per milliliter is not less than 4.0 and not more than 6.2.

(vi) It is crystalline.

(vii) It gives a positive identity test for amdinocillin.

(2) *Labeling*. It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples*. In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on the batch for amdinocillin content, sterility, pyrogens, moisture, pH, crystallinity, and identity.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(a) If it is packaged for repackaging or for use in the manufacture of another drug:

(1) For all tests except sterility: 10 packages, each containing approximately 300 milligrams.

(2) For sterility testing: 20 packages, each containing approximately 300 milligrams.

(b) If it is packaged for dispensing:

(1) For all tests except sterility: A minimum of 15 immediate containers.

(2) For sterility testing: 25 immediate containers, collected at regular intervals throughout each filling operation.

(b) *Tests and methods of assay*—(1) *Amdinocillin content*. Proceed as directed in § 436.353 of this chapter, using ambient temperature, an ultraviolet detection system operating at a wavelength of 220 nanometers, a column packed with microparticulate (3) to 10 micrometers in diameter) reversed phase packing material such as octadecyl hydrocarbon bonded silicas, e.g., a Whatman ODS-3 column (25-centimeter column having an inside diameter of 4.6 millimeters and 5 micrometer particle size or equivalent), a flow rate of 1.0 milliliter per minute, and an injection volume of 20 microliters. Reagents, working standard and sample solutions, system suitability requirements, and calculations are as follows:

(i) *Reagents*—(a) *Buffer solution* 0.01*M* pH 5.0. Transfer 1.36 grams of monobasic potassium phosphate in sufficient water to make 1,000 milliliters of solution. Adjust the pH to 5.0 ± 0.1 with 1*N* phosphoric acid or 10*N* sodium hydroxide.

(b) *Mobile phase*. Mix acetonitrile (high-pressure liquid chromatography grade): 0.01*M* pH 5.0 phosphate buffer (15:85).

(ii) *Working standard and sample solutions*—(a) *Preparation of working standard solution*. Prepare the working standard solution fresh before injection by dissolving an accurately weighed portion of the amdinocillin working standard with sufficient distilled water to obtain a stock solution containing



approximately 100 micrograms of amdinocillin per milliliter.

(b) *Preparation of sample solutions—*

(1) *Product not packaged for dispensing (micrograms of amdinocillin per milligram).* Dissolve an accurately weighed portion of the sample with sufficient distilled water to obtain a solution containing 100 micrograms of amdinocillin per milliliter (estimated).

(2) *Product packaged for dispensing.* Determine both micrograms of amdinocillin per milligram of the sample and milligrams of amdinocillin per container. Use separate containers for preparation of each sample solution as described in paragraph (b)(1)(ii)(b)(2) (i) and (ii) of this section.

(i) *Micrograms of amdinocillin per milligram.* Dissolve an accurately weighed portion of the sample with sufficient distilled water to obtain a solution containing 100 micrograms of amdinocillin per milliliter (estimated).

(ii) *Milligrams of amdinocillin per container.* Reconstitute the sample as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single-dose container; or, if the labeling specifies the

amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute the solution thus obtained with sufficient distilled water to obtain a solution containing 100 micrograms of amdinocillin per milliliter (estimated).

(iii) *System suitability requirements—*  
(a) *Tailing factor.* The tailing factor (*T*) is satisfactory if it is not more than 2.5 at 5 percent of peak height:

(b) *Efficiency of the column.* The efficiency of the column (*n*) is satisfactory if it is greater than 1,500 theoretical plates.

(c) *Resolution factor.* The resolution factor (*R*) between the peak for amdinocillin and its nearest eluting impurity is satisfactory if it is not less than 2.5.

(d) *Coefficient of variation.* The coefficient of variation (*S<sub>R</sub>* in percent) of five replicate injections is satisfactory if it is not more than 2.0 percent.

If the system suitability parameters have been met, then proceed as described in § 436.353(b)(1) of this chapter.

(iv) *Calculations.* (a) Calculate the micrograms of amdinocillin per milligram of sample as follows:

$$\text{Micrograms of amdinocillin per milligram} = \frac{A_s \times P_s \times 100}{A_r \times C_s \times (100 - m)}$$

where:

*A<sub>s</sub>* = Area of the amdinocillin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

*A<sub>r</sub>* = Area of the amdinocillin peak in the chromatogram of the amdinocillin working standard;

*P<sub>s</sub>* = Amdinocillin activity in the amdinocillin working standard solution in micrograms per milliliter;

*C<sub>s</sub>* = Milligrams of sample per milliliter of sample solution; and

*m* = Percent moisture content of the sample.

(b) Calculate the amdinocillin content of the container as follows:

$$\text{Milligrams of amdinocillin per container} = \frac{A_s \times P_s \times d}{A_r \times 1,000}$$

where:

*A<sub>s</sub>* = Area of the amdinocillin peak in the chromatogram of the sample (at a retention time equal to that observed for the standard);

*A<sub>r</sub>* = Area of the amdinocillin peak in the chromatogram of the amdinocillin working standard;

*P<sub>s</sub>* = Amdinocillin activity in the amdinocillin working standard solution in micrograms per milliliter; and

*d* = Dilution factor of the sample.

(2) *Sterility.* Proceed as directed in § 436.20 of this chapter, using the

method described in paragraph (e)(1) of that section.

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 40 milligrams of amdinocillin per milliliter.

(4) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(5) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 100 milligrams of amdinocillin per milliliter.

(6) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

(7) *Identity.* Proceed as directed in § 436.211 of this chapter, using a potassium bromide disc containing 1 milligram of amdinocillin in 300 milligrams of potassium bromide, prepared as described in paragraph (b)(1) of that section.

b. By adding new § 440.202 to read as follows:

**§ 440.202 Sterile amdinocillin.**

The requirements for certification and the tests and methods of assay for sterile amdinocillin packaged for dispensing are described in § 440.2a.

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective February 26, 1985. However, interested persons may, on or before March 28, 1985, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before March 28, 1985, a written notice of participation and request for hearing, and (2) on or before April 29, 1985, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 430.20. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests(s) the hearing, making findings and conclusions and denying a hearing. All



submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 430.20.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

*Effective date, February 26, 1985.*

(Secs. 507, 701 (f) and (g), 52 Stat. 1055-1056 as amended, 59 Stat. 463 as amended (21 U.S.C. 357, 371 (f) and (g)))

Dated: February 19, 1985.

Frances O. Kelsey,

*Acting Director, Office of Compliance, Center for Drugs and Biologics.*

[FR Doc. 85-4587 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 203

[Docket No. R-85-1175 FR-1501]

### Mutual Mortgage Insurance and Insured Home Improvement Loans, Issue Date of Debentures, Correction

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Final rule, correction.

**SUMMARY:** This document corrects a final rule published in the Federal Register on January 29, 1985 (50 FR 3891), that changed the method of computing debenture interest when a one-to four-family property is conveyed to the Secretary in exchange for insurance benefits. This document corrects the effective date of that final rule to make it retroactive to March 1, 1985.

**EFFECTIVE DATE:** March 11, 1985, retroactive to March 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Richard B. Buchheit, Director, Single Family Servicing Division, Department of Housing and Urban Development, Room 9180, 451 Seventh Street, SW.,

Washington, D.C. 20410. Telephone number (202) 755-6672. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** The Department published in the Federal Register of January 29, 1985 (50 FR 3891) a final rule entitled Issue Date of Debentures, with an announced effective date of March 11, 1985. The rule amended the regulations at 24 CFR 203.410(c) and is necessary for the effective implementation of HUD's new automated system of paying claims. That new system goes into effect on March 1, 1985.

Under the provisions of section 7 (c)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)) (Act), a final HUD rule cannot become effective for a period of 30 days of continuous session of Congress after the date on which the rule is published as final. As a result of the required 30-day delay, the rule could not become effective before March 11, 1985. However, because of the need to have the rule effective by March 1, 1985, as explained above, the rule will go into effect on March 11, 1985, but its effectiveness will be made retroactive to March 1, 1985.

Accordingly, the following correction is being made to FR Doc. 85-2108, published in the Federal Register on Tuesday, January 29, 1985, (50 FR 3891):

On page 3891, in the middle column, in the **EFFECTIVE DATE** section, the "EFFECTIVE DATE: March 11, 1985," is corrected to read: "EFFECTIVE DATE: March 11, 1985, retroactive to March 1, 1985."

**Authority:** Secs. 204(d) and 211, National Housing Act (12 U.S.C. 1710d, 1715b); Sec. 7 (d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: February 21, 1985.

Grady J. Norris,

*Assistant General Counsel for Regulations.*

[FR Doc. 85-4695 Filed 2-25-85; 8:45 am]

BILLING CODE 4210-27-M

## ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2785-1]

### Approval and Promulgation of Implementation Plans; Vermont Particulate Matter; Rutland Plywood Corp

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving a State Implementation Plan revision submitted by the State of Vermont. This revision brings the wood-fired boilers at the Rutland Plywood Corporation, Rutland, under Vermont's Regulations 5-231(3)(b) (i) and (ii) for wood-fired combustion sources of particulate matter. The intent of Regulation 5-231(3)(b) is to regulate wood-fired sources of particulate matter separately from fossil fuel-fired sources of particulate matter.

**EFFECTIVE DATE:** This action will be effective April 29, 1985 unless notice is received within 30 days that adverse or critical comments will be submitted.

**ADDRESSES:** Comments may be mailed to Harley F. Laing, Director, Air Management Division, Room 2312, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2312, JFK Federal Bldg., Boston, MA 02203; Public Information Reference Unit, Environmental Protection Agency, 401 M St., SW., Washington, D.C.; Office of the Federal Register, 1100 L St., NW., Room 8401, Washington, D.C. and the Vermont Agency of Environmental Conservation, State Office Building, Montpelier, VT 05602.

**FOR FURTHER INFORMATION CONTACT:** Susan C. Kulstad, (617) 223-4865.

**SUPPLEMENTARY INFORMATION:** On October 19, 1984, the Secretary of the Vermont Agency of Environmental Conservation (the Vermont Agency) submitted a revision to the Vermont State Implementation Plan (SIP). The revision brings the wood-fired boilers at the Rutland Plywood Corporation (the Company) under Vermont's regulation for wood-fired sources of particulate matter. Until now, the wood-fired boilers at the company have been regulated as a fossil fuel-fired source.

### Background

On March 27, 1979, Vermont submitted a SIP revision to regulate wood-fired combustion sources of particulate matter separately from fossil fuel-fired combustion sources. Prior to this time, allowable emissions were a function of heat input to the fuel burning equipment. Because of the high variability of both the physical and chemical properties of wood and the methods of wood-firing, the determination of heat input is difficult. To remedy this situation, Vermont Regulation 5-231(3)(b) expresses the emission limitations as concentrations of particulate matter in the flue gas. Since the new regulation only affects the



way the Vermont Agency regulates wood-fired sources, no increase in actual emissions results from this change in the regulation. However, the wood-fired regulation does increase allowable emissions. EPA determined that the submission was technically deficient because it did not include a demonstration that no violations of the National Ambient Air Quality Standards (NAAQS) for total suspended particulate matter (TSP) would result from the revision.

On February 12, 1982, Vermont submitted supplementary technical information for the revision, but excluded three wood-fired sources including the Company. These sources were excluded because adequate technical support had not been completed. Vermont agreed to submit source specific SIP revisions for each source when the technical support was complete. On April 16, 1982, EPA published its approval of Regulation 5-231(3)(b) for all but the three sources (40 CFR 52.2370(c)(16)).

#### New Technical Support

EPA has now received technical support demonstrating that the NAAQS for TSP will not be violated if the Company is regulated under the wood-fired combustion source regulation. This technical support, included in the SIP revision submitted on October 19, 1984 and supplemented by EPA analyses, consists of air quality modeling of the Company's wood-fired boilers. The technical support also demonstrates that this revision will not cause significant deterioration of air quality or interfere with the attainment or maintenance of the NAAQS in any other state. An analysis of compliance with Prevention of Significant Deterioration (PSD) increments was not required in Vermont since the TSP baseline has not been triggered anywhere in the state.

EPA has reviewed the new technical support and has determined that the modeling procedures are correct and approvable. For more details on EPA's review, see the technical support document available at the locations listed in the ADDRESSES section of this notice.

#### Public Participation

The Company was included in the public notice and hearing when Vermont revised Regulation 5-231(3) in 1978. Since then, the manner in which Vermont proposed to regulate the

Company has not changed. Thus the earlier public participation process was judged sufficient and not repeated.

#### Final Action

EPA is approving this SIP revision, submitted on October 19, 1984, to bring the wood-fired boilers at the Rutland Plywood Corporation under Vermont Regulations 5-231(3)(b) (i) and (ii) for wood-fired combustion sources of particulate matter.

Portions of EPA's stack height regulations that were promulgated on February 8, 1982 (40 CFR Part 51) were overturned, including a definition of "dispersion techniques" at § 51.1(hh) that applies to the Company. *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983). In response, EPA published proposed revised stack height regulations on November 9, 1984 (49 FR 44876). Consistent with the proposed regulations, the Company's combined gas flows that are emitted through a common stack were evaluated as dissociated gas flows through separate stacks. The results of this evaluation also demonstrate that the NAAQS for TSP would not be violated. The height of the Company's common stack is less than both the GEP formula height of 20 m and the unchallenged *de minimis* height provided for in EPA's regulations at 40 CFR § 51.1(ii)(1). While EPA believes the action taken today to be consistent with the court decision, this action may be subject to modification when the revised final regulations are promulgated. This may result in a revised emission limitation.

Since EPA views this SIP revision as noncontroversial, we are taking this action without prior proposal. This action will be effective April 29, 1985. However, if EPA is notified within 30 days that adverse or critical comments will be submitted, we will withdraw this action and publish a new rulemaking proposing the action and establishing a comment period.

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 29, 1985. This action may not be challenged later in proceedings to enforce its requirements. (See Sec. 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control agency, Particulate matter, and Incorporation by reference.

Authority: Sections 110(a) and 303(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

Note.—Incorporation by reference of the State Implementation Plan for the State of Vermont was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 20, 1985.

Lee M. Thomas,  
Administrator.

#### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

#### Subpart UU—Vermont

1. Section 52.2370, paragraph (c) is amended by adding paragraph (18) as follows:

##### § 52.2370 Identification of plan.

• • • • •

(c) \* \* \*

(18) A revision to approve Vermont Regulation 5-231(3)(b) for Rutland Plywood Corporation, submitted on October 19, 1984 by the Secretary of the Vermont Agency of Environmental Conservation.

(Note.—Rutland Plywood Corporation was excluded from the original approval of Regulation 5-231(3)(b) in the Vermont SIP, identified at paragraph (c)(16) above.)

##### § 52.2381 [Amended]

2. Section 52.2381 is amended by adding the following:

| State citation, title, and subject               | Date adopted by State | Date approved by EPA | Federal Register citation | Section 52.2370               | Comments |
|--------------------------------------------------|-----------------------|----------------------|---------------------------|-------------------------------|----------|
| Section 5-231 prohibition of particulate matter. | Feb. 26, 1985         | 50 FR 7767           | (c)(18)                   | Approved for Rutland Plywood. |          |

[FR Doc. 85-4631 Filed 2-25-85; 8:45 am]

BILLING CODE 6560-50-M



## 40 CFR Part 52

(Region II Docket No. 47; A-2-FRL-2784-8)

**Approval and Promulgation of State Implementation Plans; Revision to the Virgin Islands Implementation Plan****AGENCY:** Environmental Protection Agency.**ACTION:** Final rule.

**SUMMARY:** This notice announces the Environmental Protection Agency approval of a revision to the Virgin Islands Implementation Plan to permit Martin Marietta Aluminum Properties, Incorporated, and Hess Oil Virgin Islands Corporation, located on the Island of Saint Croix, to continue to use fuel oil with a maximum sulfur content of 1.5 percent, by weight. The current Virgin Islands' regulation limits fuel oil sulfur content to 0.50 percent, by weight. Today's approval will allow the higher sulfur content fuel oil to continue to be used for one year from today's date.

**EFFECTIVE DATE:** This action is effective on February 26, 1985.

**ADDRESSES:** All correspondence, comments and other written submissions pertaining to this action, including documents referenced in this notice, are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Air Programs Branch, Region II Office, 26 Federal Plaza, Room 1005, New York, New York 10278

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, D.C. 20460

Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, D.C. 20408.

**FOR FURTHER INFORMATION CONTACT:** William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

**SUPPLEMENTARY INFORMATION:** On December 1, 1983 the Virgin Islands Department of Conservation and Cultural Affairs submitted to the Environmental Protection Agency (EPA) a proposed revision to the Virgin Islands Implementation Plan concerning an administrative order issued to Martin Marietta Aluminum Properties, Incorporated (MMAPI) and Hess Oil Virgin Islands Corporation (HOVIC). This administrative order allows the continued use by MMAPI and HOVIC of fuel oil with a maximum sulfur content

of 1.5 percent, by weight. The oil can be used at those fuel burning units which presently burn number 6 fuel oil and which are not restricted by other permit conditions.

Both MMAPI and HOVIC are located in the southern industrial complex on the Island of Saint Croix. Sources in this location currently are required by Virgin Islands' regulation to burn fuel oil with a maximum sulfur content of 0.50 percent, by weight. However, under EPA approved variances, 1.5 percent sulfur content fuel oil has been burned at the affected units since May 2, 1980 (45 FR 29293) (46 FR 44188, September 3, 1981) (48 FR 9257, March 4, 1983). The most recent administrative order issued by the Virgin Islands would continue this variance for one additional year.

EPA's review of the Virgin Islands' latest implementation plan revision request included technical material submitted by MMAPI and recent air quality data. EPA also reviewed an air quality impact analysis of Prevention of Significant Deterioration (PSD) increment consumption submitted by HOVIC. This analysis was required by a condition placed on a May 2, 1983 PSD permit issued to HOVIC. Based on these reviews, EPA concurred with the Virgin Islands Government that no violations of national ambient air quality standards or PSD increments will occur as a result of the continued use of 1.5 percent, by weight, sulfur content fuel oil at the affected units.

Consequently, on April 30, 1984 (49 FR 18816) EPA proposed to approve the Virgin Islands Implementation Plan revision request. However, this notice indicated that the final approval of the Virgin Islands' proposal was contingent on the resolution to two issues: the enforceability of certain emission levels at the HOVIC facility, and whether PSD baseline emission calculations for the Island of St. Croix were performed correctly.

Subsequently, both of these issues have been resolved to EPA's satisfaction. However, another issue arose which potentially could have affected EPA's decision on approvability. It concerned EPA's stack height regulation, which was promulgated on February 8, 1982 (47 FR 5864).

Portions of this regulation have recently been overturned by a panel of the U.S. Court of Appeals for the District of Columbia Circuit [*Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983)]. However, EPA has determined that the action being taken today is consistent with the court decision and is not subject to modification based on the revised

regulation proposed in the Federal Register on November 9, 1984 (46 FR 44878). Additionally, today's action will be reevaluated for consistency with EPA's final stack height regulation when it is promulgated.

Based on these facts and the fact that no public comments were received on EPA's April 30, 1984 notice of proposed rulemaking, EPA has determined the Virgin Islands' implementation plan revision request meets the requirements of the Clean Air Act. It is therefore being approved, effective immediately. This action is being made immediately effective because it imposes no hardship on the affected sources and because no purpose would be served by delaying its effective date.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of today. This action may not be challenged later in proceedings to enforce its requirements. [See sec. 307(b)(2) of the Act, 42 U.S.C. 7607(b)(2)]

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

**List of Subjects in 40 CFR Part 52**

Air pollution control agency, Sulfur dioxide, and Incorporation by reference.

**Note.**—Incorporation by Reference of the Implementation Plan for the Virgin Islands was approved by the Director of the Federal Register on July 1, 1982.

(Secs. 110 and 301 of the Clean Air Act, as amended (42 U.S.C. 7410 and 7601))

Dated: February 20, 1985

Lee M. Thomas,

Administrator, Environmental Protection Agency.

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

**Subpart CCC—Virgin Islands**

Section 52.2770 is amended by adding a new paragraph (c)(15) as follows:

**§ 52.2770 Identification of plan.**

(c) The plan revisions listed below were submitted on the dates specified.

(15) Revision submitted on December 1, 1983 by the Virgin Islands Department of Environmental Conservation and



Cultural Affairs which grants a variance establishing, for one year from February 26, 1985, a maximum sulfur-in-fuel-oil limitation of 1.5 percent, by weight, for the Hess Oil Virgin Islands Corporation and the Martin Marietta Aluminum Properties, Inc. facilities located on the Island of Saint Croix.

[FR Doc. 85-4632 Filed 2-25-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[Docket No. A-1-FRL-2782-4]

#### Approval and Promulgation of Implementation Plans, Maine; Particulate Emissions Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving State Implementation Plan revisions submitted by the State of Maine. These statewide revisions will require fuel burning equipment to meet more stringent particulate emissions limits. The intended effect of this action is to ensure maintenance of air quality standards as required under section 110 of the Clean Air Act.

**EFFECTIVE DATE:** March 28, 1985.

**ADDRESSES:** Copies of the submittal are available for public inspection at Room 2313, JFK Federal Building, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street, SW, Washington, D.C. 20460; Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, D.C.; and Maine Department of Environmental Protection, Bureau of Air Quality Control, Ray Building, Hospital Street, Augusta, Maine 04333.

**FOR FURTHER INFORMATION CONTACT:** Margaret McDonough, (617) 223-4870.

**SUPPLEMENTARY INFORMATION:** On September 19, 1984, (49 FR 36661), EPA published a notice of proposed rulemaking (NPR) for the revisions to Chapter 103, "Fuel Burning Equipment Particulate Emission Standard."

The revisions and the rationale for EPA's proposed action are explained in that NPR and will not be restated here. EPA received no comments on its proposal to approve this revision.

As stated in the NPR, new oil, gas and petroleum burning sources rated at exactly 250 MM Btu were inadvertently omitted in the revised Chapter 103. The DEP corrected this omission and submitted the correction on December 4, 1984.

#### Final Action

EPA is approving the revisions to Chapter 103 "Fuel Burning Equipment Particulate Emission Standard." The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Incorporation by reference.

**Authority:** Secs. 110(a) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7601(a)).

**Note.**—Incorporation by reference of the State Implementation Plan for the State of

Maine was approved by the Director of Federal Register on July 1, 1982.

Dated: February 15, 1985.

Lee M. Thomas,  
Administrator.

#### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

##### § 52.1020 [Amended]

1. Section 52.1020, (c) is amended by adding paragraph (c)(19) as follows:

##### § 52.1020 Identification of plan.

• • • • •  
(c) • • •

(19) On January 11, 1983 and March 29, 1984 and December 4, 1984 the Maine Department of Environmental Protection submitted revisions to Chapter 103 "Fuel Burning Equipment Particulate Emission Standard."

##### § 52.1030 [Amended]

2. Section 52.1030 is amended as follows:

TABLE 52.1030—EPA—APPROVED RULES AND REGULATIONS

| State citation | Title/subject                                         | Date adopted by State | Date approved by EPA | Federal Register citation | 52.1020 | Comments |
|----------------|-------------------------------------------------------|-----------------------|----------------------|---------------------------|---------|----------|
| 103            | Fuel burning equipment particulate emission standard. | Jan. 31, 1972         | May 31, 1972         | 37 FR 10842               | b       |          |
|                |                                                       | Jan. 24, 1983         | Feb. 26, 1985        | 50 FR 7770                | (c)19   |          |

[FR Doc. 85-4360 Filed 2-25-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-3-FRL-2782-1; EPA Docket Nos. AM049, 50, 51, 56 and 57MD]

#### Approval of Revisions to the Maryland State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is approving five (5) revisions to the Maryland State Implementation Plan (SIP). These revisions, which were submitted to EPA on December 13, 1983 and April 6, 1984, consist of Plans for Compliance (PFC) for each of the following Companies: General Motors Corporation, GM Assembly Division (Baltimore City Plant); American Can Company (Baltimore City); National Can Corporation (Baltimore County); Crown

Cork and Seal Company, Inc. (Baltimore City); and Continental Can Company, (Baltimore City). The PFCs require compliance by each of the companies with all applicable provisions of the Code of Maryland Regulations (COMAR) governing the emission of volatile organic compounds (VOC). The PFCs for the American Can Company, National Can Corporation, Crown Cork and Seal Company, and the Continental Can Company also require compliance with the applicable Maryland regulations which govern visible emissions (VE). EPA proposed approval of these PFCs on September 19, 1984, 49 FR 36663.

**EFFECTIVE DATE:** This action is effective February 26, 1985.

**ADDRESSES:** Copies of the revisions and accompanying support documents are available for inspection during normal business hours at the following offices: U.S. Environmental Protection Agency, Region III, Air Management Division (3AM00), Curtis Building, Sixth &



Walnut Streets Philadelphia, PA 191067, ATTN: James B. Topsale, P.E.  
 Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, Maryland 21201, Attn: George P. Ferreri  
 Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 201 "M" Street, S.W. (Waterside Mall), Washington, DC 20460  
 The Office of the Federal Register, 1100 L Street, N.W., Room 8401, Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Mr. James Topsale, P.E. or Mr. Paul Racette at the Region III address stated above or telephone (215) 597-4553 or 597-9009.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On December 13, 1983 and April 6, 1984, the State of Maryland submitted revisions to their State Implementation Plan (SIP) in the form of Plans for Compliance (PFCs) for each of the 5 companies. The companies are located in the Metropolitan Baltimore Air Quality Control Region (AQCR), a nonattainment area for Ozone (O<sub>3</sub>). The PFCs assure that each company is placed on a reasonable schedule for achieving compliance with the State of Maryland's volatile organic compound (VOC) and visible emission (VE) regulations. Companies in the O<sub>3</sub> nonattainment area must achieve compliance with Maryland's VOC regulations on or before 1987 in order to assure that the National Ambient Air Quality Standard (NAAQS) for O<sub>3</sub> is met in the AQCR as expeditiously as possible, but no later than the 1987 attainment deadline.

EPA proposed approval of these revisions in a Notice appearing in the *Federal Register* (49 FR 36663) on September 19, 1984. No comments were received on the proposed Rulemaking Notice for the subject SIP revisions. A complete explanation of each company's plan to achieve compliance is included in the September 19, 1984 Notice. A short summary of the control strategies of each company is as follows:

**General Motors Corporation, Baltimore City (AM049MD)**

The General Motors Corporation (GM) PFC ensures that the requirements of COMAR 10.18.21.03B, *Control of VOC Emissions from Automotive and Light Duty Truck Coating*, and COMAR 10.18.21.13, *Control of VOC Emissions from Miscellaneous Metal Coating*, will be met as expeditiously as possible. The

PFC includes control strategies for the prime coat, primer-surfacer, final repair coating, and topcoat, along with an outline for developing control strategies for the hi-temp anti-corrosion coating, anti-corrosion wax, zinc-rich primers, and coatings for steering columns.

GM shall be in compliance with COMAR 10.18.21.03B for the prime coat by December 31, 1984, through the construction of an electrodeposition facility (ELPO). GM shall also achieve compliance with their primer-surfacer and final repair coatings by December 31, 1984 through the development of low solvent coatings that meet the requirements of COMAR 10.18.21.03B.

The Company shall achieve compliance with their topcoat coatings by December 31, 1986. This will be achieved by the development of compliance coatings and through the utilization of alternative control techniques such as the application of solventborne coatings with improved transfer efficiencies and booth or oven emission abatement. Finally, the PFC contains provisions for ensuring compliance with COMAR 10.18.21.13B by December 31, 1986 for GM's hi-temp anti-corrosion coatings, anti-corrosion wax, zinc-rich primers, and the coatings for steering columns.

**The American Can Company, Baltimore City (AM050MD)**

The American Can Company (American Can) must meet the requirements of COMAR 10.18.12.04B, *Control of VOC Emissions from Can Coating*, and COMAR 10.18.06.02B, *Control of Visible Emissions*. Their PFC includes control strategies for end-seal/sheet base coatings and inside body spray and side seam stripe coating. Compliance is to be achieved by the development of low solvent replacement coatings. The Company shall be in compliance with all the requirements of COMAR 10.18.21.04 by December 31, 1985. This will be attained by converting these coatings to low solvent coatings or by converting a sufficient number of these materials to low solvent coatings so that the entire can manufacturing operation shall be in compliance by utilizing the daily production weighted averaging technique outlined in EPA's Policy Memorandum of December 8, 1980, 45 FR 80824. If the Company determines that compliance cannot be achieved solely through the use of low solvent coatings, control equipment shall be purchased and installed. This equipment will consist of a fume incinerator, and shall assure compliance by the designated December 31, 1985 deadline.

**The National Can Corporation, Baltimore City (AM051MD)**

The National Can Corporation (National Can) must meet the requirements of COMAR 10.18.21.04B and COMAR 10.18.06.02B. Their PFC includes control strategies for end-seal compound and sheet base coatings. Compliance is to be achieved by the development of low solvent replacement coatings. The company shall be in compliance with all the requirements of COMAR 10.18.21.04 by December 31, 1985. This will be attained by converting these coatings to low solvent coatings or by converting a sufficient number of these materials to low solvent coatings so that the entire can manufacturing operation shall be in compliance by utilizing the daily production weighted averaging technique outlined in EPA's Policy Memorandum of December 8, 1980, 45 FR 80824. If the company determines that compliance cannot be achieved solely through the use of low solvent coatings, control equipment shall be purchased and installed. This equipment shall assure compliance by the designated December 31, 1985 deadline.

**Crown, Cork and Seal Company, Baltimore City, Continental Can Company, Baltimore City, AM056,57MD**

The Crown Cork and Seal Company (Crown Cork and Seal) and Continental Can Company (Continental Can) have submitted PFCs that are similar to those submitted by National Can and American Can. Crown Cork and Seal (AM057MD) must meet the requirements of COMAR 10.18.21.04B, COMAR 10.18.21.13C and COMAR 10.18.06.02B, while Continental Can (AM056MD) must meet the requirements of COMAR 10.18.21.04B and COMAR 10.18.06.02B. Crown Cork and Seal's PFC includes control strategies for end-seal compound, sheet base coat, and crown manufacturing while Continental Can's PFC includes control strategies for end-seal compound and sheet base coat. As was described for National and American Can, compliance is to be achieved by the development of low solvent coatings. By December 31, 1985, each of these companies shall be in compliance with all the required regulations. This will be achieved through the development of the low solvent coating technology and the daily production weighted averaging technique as it is needed.

If compliance cannot be achieved solely through the use of low solvent coatings, each company shall purchase and install control equipment. The two



companies shall achieve compliance by the designated December 31, 1985 deadline if control equipment is necessary.

#### EPA Evaluation

Based on our review of these PFCs, EPA is today announcing final approval of these PFCs as SIP revisions. This approval is based in part on the State's demonstration that Reasonable Further Progress (RFP) in attaining the ozone NAAQS will not be significantly affected by the plans, and on the evidence that the plans will achieve compliance as expeditiously as possible.

The State has determined that each of the 5 PFCs will maintain RFP in reducing VOC emissions in the Metropolitan Baltimore Intrastate AQCR. The Maryland Department of Health and Mental Hygiene (DHMH) has estimated VOC emissions for each company for 1980, 1982, and 1987, and has demonstrated that each company will effectively reduce VOC emissions over the eight year period, with full compliance being achieved by, or before, 1987. In the Metropolitan Baltimore Intrastate AQCR, VOC emissions as a result of the five PFCs will be reduced from 14,070 tons VOC/year in 1980 to 3,980 tons VOC/year in 1987 resulting in a 10,090 tons VOC/year incremental reduction in total regional VOC emissions. The conclusions concerning the expeditiousness of the PFCs are based upon detailed discussions with each company and the EPA policy statements for Can Coating Operations and Automobile Assembly Plant Operations that are cited in this Notice.

Each company is committed to submit to the DHMH either quarterly or semi-annual progress reports consisting of the reporting requirements specified in each company's PFC. Additionally, each company must notify the DHMH immediately of any inability to meet the increments of progress required by the PFCs, including the reasons for noncompliance with the requirements.

#### Conclusion

These SIP revisions meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The Office of Management and Budget has exempted these rules from the requirements of Section 3 of Executive Order 12291.

Under Section 307(b)(1) of the Act, petitions for judicial review of these

actions must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from today). These actions may not be challenged later in proceedings to enforce their requirements. (See 307(b)(2)).

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Maryland was approved by the Director of the Federal Register on July 1, 1982.

#### List of Subjects in 40 CFR 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Incorporation by reference.

[42 U.S.C. 7401-7642]

Dated: February 15, 1985.

Lee M. Thomas,  
Administrator.

#### PART 52—[AMENDED]

Part 52 of Title 40, Code of Federal Regulations, is amended as follows:

##### Subpart V—Maryland

In § 52.1070, Identification of Plan, paragraph (c) is amended by adding the following paragraphs (c)(75)–(79):

##### § 52.1070 Identification of plan.

• • • • •  
(c) • • •

(75) Revision submitted by the State of Maryland on December 13, 1983 consisting of a Plan for Compliance for the General Motors Corporation, GM Assembly Division, Baltimore City Plant.

(76) Revision submitted by the State of Maryland on December 13, 1983 consisting of a Plan for Compliance for the American Can Company, Baltimore City.

(77) Revision submitted by the State of Maryland on December 13, 1983 consisting of a Plan for Compliance for the National Can Corporation, Baltimore County.

(78) Revision submitted by the State of Maryland on April 6, 1984 consisting of a Plan for Compliance for the Crown Cork and Seal Company, Inc., Baltimore City.

(79) Revision submitted by the State of Maryland on April 6, 1984 consisting of a Plan for Compliance for the Continental Can Company, Baltimore City.

[FR Doc. 85-4364 Filed 2-25-85; 8:45 am]

BILLING CODE 8560-50-M

#### 40 CFR Part 52

[A-3-FRL-2780-4; EPA Docket Nos. AM600/601/602/603PA]

#### Approval of Revisions to the Pennsylvania State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This notice approves portions of the 1982 Ozone and Carbon Monoxide State Implementation Plan submitted by the Commonwealth of Pennsylvania on June 30, 1982 and October 24, 1983.

The intended effect of this SIP revision is to provide for attainment of the primary National Ambient Air Quality Standards for Ozone and Carbon Monoxide as required under Part D of the Clean Air Act Amendments of 1977 in the Philadelphia, Pittsburgh, and Allentown-Bethlehem-Easton nonattainment areas.

**EFFECTIVE DATE:** February 26, 1985.

**ADDRESSES:** Copies of Pennsylvania's submittals, EPA's Technical Support Document, and any related supporting material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency,  
Air Management Division, Curtis  
Building, 6th & Walnut Streets,  
Philadelphia, PA 19106, ATTN: Ms.  
Eileen M. Glen

Pennsylvania Department of  
Environmental Resources, Bureau of  
Air Quality Control, Fulton Bank  
Building, 200 N. 3rd Street, Harrisburg,  
PA 17120, ATTN: Mr. Gary Triplett  
Public Information Reference Unit,  
Room 2922, EPA Library, U.S.  
Environmental Protection Agency, 401  
M Street, S.W., Washington, DC 20460  
Office of the Federal Register, 1100 L  
Street, N.W., Room 8401, Washington,  
DC

**FOR FURTHER INFORMATION CONTACT:**  
Ms. Eileen M. Glen, Pennsylvania Air  
Program Manager, at the EPA Region III  
address above or telephone (215) 597-  
8379.

**SUPPLEMENTARY INFORMATION:** In response to provisions of the 1977 Amendments to the Clean Air Act, the Commonwealth of Pennsylvania submitted to EPA several revisions to its SIP for ozone and carbon monoxide. EPA approved some of these revisions on May 20, 1980. However, because the Commonwealth requested and received an extension to December 31, 1987 for the attainment of the ozone standard in



the Philadelphia, Pittsburgh, and Allentown-Bethlehem-Easton areas and until June 30, 1983 in Philadelphia and until December 31, 1985 in Pittsburgh for the attainment of the carbon monoxide standard, the Commonwealth was required to submit another SIP revision by July 1, 1982.

The Commonwealth submitted the required revisions to its ozone and carbon monoxide SIP on June 30, 1982. Based on EPA's review of that material, on February 3, 1983 (48 FR 5096), EPA proposed approval of some portions of the plan and proposed disapproval, unless the noted deficiencies were corrected, of others.

On October 24, 1983, the Commonwealth submitted a SIP revision which corrects the deficiencies noted in the February 3, 1983, Federal Register proposal. This submittal was reviewed by EPA and a proposed rulemaking action was published by EPA on August 27, 1984 (49 FR 33902).

Unless otherwise noted, today's Notice finalizes actions proposed in either the February 3, 1983 or August 27, 1984 Notices, *supra*.

This Notice is divided into six main sections:

- A. General Requirements;
- B. General Issues;
- C. The Southeastern Pennsylvania Area (Philadelphia);
- D. The Southwestern Pennsylvania Area (Pittsburgh);
- E. The Allentown-Bethlehem-Easton Areas (A-B-E); and
- F. Public Comments.

These sections will briefly describe the elements of the Pennsylvania SIP revision. A more detailed discussion may be found in the Technical Support Document and the February 3, 1983 or the August 27, 1984, Federal Register Notices, *supra*. Copies of this material are available for inspection at any of the offices listed under "ADDRESSES" above.

#### A. General Requirements

The Clean Air Act Amendments of 1977 require that any State granted an extension of the December 31, 1982 attainment date for ozone and carbon monoxide NAAQS submit an implementation plan by July 1, 1982. This plan must satisfy the requirements of section 172(b) of the Act and must demonstrate attainment of the ozone and carbon monoxide standards no later than December 31, 1987.

#### B. General Issues

On February 3, 1983 (48 FR 5096), EPA proposed to disapprove or to take no action on the following portions of the O<sub>3</sub>/CO SIP for all three nonattainment areas:

1. Public Hearings;
2. Inspection/Maintenance; and
3. Perchloroethylene Dry Cleaning Regulations.

On August 27, 1984 (49 FR 33902), EPA proposed approval of the Public Hearing portions of the SIP for all three areas. This proposal was based on the Commonwealth's submittal of October 24, 1983 which contained evidence of adequate public notice and hearings for all three areas. Today, EPA is taking final action to approve this portion of the O<sub>3</sub>/CO SIP.

The motor vehicle inspection and maintenance (I/M) portion of the SIP for all three areas is still inadequate although the major deficiency has been corrected by the passage of I/M legislation. The Governor signed Senate Bill No. 1 into law on June 13, 1983 and the I/M program began operation in the three nonattainment areas on June 1, 1984. The only remaining deficiency is the actual submittal, by the Pennsylvania Department of Transportation and the Department of Environmental Resources, of documentation of the I/M elements required for the 1982 SIP revision. EPA is working closely with PennDOT and DER to expedite this submittal and we expect public hearings to be held and the regulations to be submitted within the next few months. Because the I/M program is in fact operating and only the formal submittal of the required SIP elements remains, EPA believes the most appropriate course at this time is to take no further action on this portion of the SIP.

Pennsylvania has submitted stationary source control measures which satisfy the requirement for adopting Reasonably Available Control Technology (RACT) on all categories of VOC sources (Groups I and II) except the Perchloroethylene Dry Cleaning sources. In proposed notices of May 27, 1982 (45 FR 23186), for Pennsylvania and August 24, 1982 (45 FR 36857) for Allegheny County, EPA discussed the deficiencies in the Dry Cleaning regulations, and explained why no action was taken on them at that time. The deficiencies remain and, on February 3, 1983, EPA again proposed to take no action. Furthermore, EPA published a Notice on October 24, 1983 at 48 FR 49097 proposing to add perchloroethylene to the list of organic compounds which are negligibly reactive and thus may be exempt from regulation under SIP's to attain the ozone NAAQS. In light of this pending action, EPA believes it to be inappropriate to take any further action on this portion of Pennsylvania's SIP.

#### C. Southeastern Pennsylvania Area

The Metropolitan Philadelphia Interstate AQCR includes the following counties: Bucks, Chester, Delaware, Montgomery and Philadelphia in Pennsylvania; Burlington, Camden, Gloucester, Mercer, and Salem in New Jersey, and New Castle in Delaware. This Notice applies only to the Pennsylvania portion of the AQCR.

In addition to the portions of the SIP discussed under General Issues, the following elements of the O<sub>3</sub>/CO SIP have also been reviewed.

##### I. Ozone

#### 1. Emission Inventory

The Commonwealth submitted an emissions inventory including point sources, area sources, and mobile sources on June 30, 1982. Several deficiencies in both the point and area source inventories were noted and transmitted to the Commonwealth on August 15, 1982. On October 29, 1982, DER responded to most of these comments and the revised inventory submitted on October 24, 1983 corrects the previously noted deficiency. Therefore, EPA is approving this portion of the SIP.

#### 2. Demonstration of Attainment/Modeling

The June 30, 1982 submittal did not demonstrate attainment of the ozone standard by December 31, 1987 and, therefore, the February 3, 1983 Notice proposed disapproval of this portion of the SIP.

The October 24, 1983 submittal addresses the previously noted deficiencies in that the Commonwealth acknowledges that the original EKMA modeling shows that a 44% reduction in volatile organic compound (VOC) emissions is needed to attain the standard while the existing regulations would achieve only a 38.5% reduction in such emissions. The Commonwealth further discusses the need for an additional EKMA modeling analysis, using the supposedly more accurate Carbon Bond III mechanism to determine the reduction really necessary to attain the O<sub>3</sub> standard. Although EPA supports and is continuing to work with the Pennsylvania Department of Environmental Resources (DER) and the other agencies involved in the reanalysis of the ozone modeling, such pending reanalysis does not negate the existing analysis and the need for 44% reduction in VOC emissions.

Therefore, any proposed revision to the SIP must contain a commitment to meet the required 44% VOC emissions reduction. In his letter dated July 26,



1983, the Secretary of Pennsylvania DER reaffirmed the Commonwealth's commitment to this reduction and stated that the final SIP revision would explicitly include such a commitment. The proposed SIP revision not only specifically commits to achieve the full 44% reduction but it also lists several extraordinary emission reduction measures which will be used to eliminate the 5.5% shortfall and provides a schedule by which these measures will be evaluated and the appropriate ones adopted, by March 15, 1985.

EPA believes the Demonstration of Attainment portion of the Philadelphia plan is now acceptable and proposed approval of it in the August 27, 1984 Notice, *supra*.

No public comments were received as a result of the proposed approval and, therefore, EPA is today issuing final approval of this portion of the SIP.

### 3. Reasonable Further Progress

The February 3, 1983 Notice, *supra*, proposed disapproval of this portion of the SIP because the RFP curve and presentation in the June 30, 1982 submittal failed to demonstrate attainment of the ozone standard by December 31, 1987.

Although the reasonable further progress (RFP) curve included in the October 24, 1983 submittal demonstrates attainment of the ozone standard by December 31, 1987, the projected emission levels will exceed those that would be achieved on a linear reduction from 1982 through 1987. EPA's policy has been that reductions must be at least equivalent to a linear reduction for each year prior to attainment. In light of the delayed implementation of the I/M program and the adoption of the extraordinary control measures by March 15, 1985, it is not unreasonable to expect a slightly less than linear reduction in VOC emissions from 1982 through 1987.

The proposed RFP curve does not conform to existing EPA policy. EPA has determined that the maximum deviation from the RFP line would occur in 1985 and would be approximately 15,000 kg/day or about 4 percent of the 1985 projected emission level. In view of the demonstration of attainment based upon the control measures proposed in the SIP, EPA does not believe it represents a significant deficiency in the overall SIP assuming these further emission reduction commitments are met. Therefore, the August 27, 1984 Notice, *supra*, proposed approval of this portion of the SIP but stated a final decision would not be made until any relevant public comments were reviewed and evaluated.

No public comments were received in response to that Notice. Therefore, EPA is now approving this portion of the SIP.

### 4. Stationary Source Controls

The Clean Air Act mandates that States adopt regulations requiring Reasonable Available Control Technology (RACT). Therefore, as part of the 1982 submittal, States must have included RACT for: (a) All sources of VOC's covered by a Control Techniques Guideline (CTG); and, (b) all remaining major stationary sources with the potential to emit more than 100 tons of VOC per year.

EPA requires that the submittal either include legally enforceable measures to implement RACT for these sources or else document the State's determination that the existing level of control represents RACT for each of these sources.

a. CTG Regulations: The State has adopted adequate regulations for all VOC sources covered by EPA CTG's published to date (Groups I and II) except for the control of Perchloroethylene Dry Cleaning emissions. This regulation is discussed in the "General Issues" section of this notice. The State has also committed to adopt, implement and enforce RACT regulations for applicable VOC source categories after future guidelines are released.

The February 3, 1983 Federal Register notice (48 FR 5096) stated that this section of the SIP was acceptable. However, the October 24, 1983 submittal contains a revised schedule for the adoption of the pending Round III Control Technique Guidelines (CTG's) that would allow the Commonwealth up to twenty months to review and adopt appropriate CTG's.

On April 4, 1979, 44 FR 20372, 20376, EPA published a proposed rulemaking requiring that States adopt a CTG within twelve months after the January following publication of the CTG by EPA. This policy allowed states thirteen to twenty-four months, depending on the EPA publication date, to complete their regulatory adoption process and submit the regulation to EPA as a SIP revision. Pennsylvania, like most states, committed to meeting this schedule in their 1979 Part D nonattainment SIP's. Now, however, this schedule may not always be realistic in light of the fact that many states have adopted legislative overview requirements. During the 1981-1982 legislative season, the Pennsylvania General Assembly passed such a legislative overview requirement. It now can take up to two years for Pennsylvania Department of Environmental Resources to

administratively process a regulatory revision.

Because of this extremely time consuming process, Pennsylvania cannot commit to meeting EPA's CTG adoption schedule in its 1982 Part D SIP. Instead, they have proposed a straight twenty months from EPA publication to state adoption.

As mentioned earlier, the CTG adoption schedule is included in the approval status of Part 52 for most States and it would take a major rulemaking action to void these requirements nationally. However, EPA believes that it can apply some discretion in approving State schedules. Pennsylvania's commitment to adopt RACT requirements for Group III sources within 20 months is within the 13- to 24-month schedule (depending upon CTG publication date) required by the Part 52 regulations and is consistent with the intent of the agency in issuing these regulations. Therefore, EPA proposed approval of the revised CTG adoption schedule on August 27, 1984, *supra*. No adverse public comments were received and we are now taking final action to approve this portion of the SIP.

b. Regulations for 100 Ton Per Year Sources: The February 3, 1983 Notice, *supra*, proposed disapproval of this portion of the SIP because in the June 30, 1982 submittal, RACT had not been applied to three of the major sources of VOC emissions in Bucks, Chester, Delaware, and Montgomery Counties. For Philadelphia County two major sources were not controlled to RACT levels. In any area receiving an extension beyond 1982, control of all sources of VOC emissions over 100 tons per year is a required part of the 1982 SIP revision.

The October 24, 1983 submittal includes a schedule for adoption of regulations for greater than 100 TPY sources and makes a firm commitment to adopt, implement and submit the appropriate regulations to EPA as SIP revisions. EPA proposed to approve this schedule in the August 27, 1984 Notice, *supra*.

No adverse public comments were received in response to that Notice and, therefore, we are today approving this portion of the SIP.

### 5. Transportation Control Measures

The Delaware Valley Regional Planning Commission (DVRPC) was the lead agency in the development of the transportation portion of the Philadelphia SIP. The Technical Advisory Committee for Transportation, which included representatives of local



governments and transportation agencies in both Pennsylvania and New Jersey, performed a preliminary analysis of 75 measures, which encompassed all of the reasonably available transportation measures (RATM) identified in Section 108(f) of the Clean Air Act. Of the original 75 measures, 33 measures (15 in Pennsylvania, 18 in New Jersey) were analyzed in detail and recommended for approval by the DVRPC Board which subsequently approved the recommended measures for submission to the State. These measures and the total VOC emissions reduction resulting from these measures are discussed in detail in the February 3, 1983 Notice, *supra*.

Commitments to the recommended measures are made in Appendix D of the plan (June 30, 1982 submittal) by the City of Philadelphia, Southeastern Pennsylvania Transportation Authority and the Greater Philadelphia Bicycle Coalition. The process of commitments is continuing and additional State and local agencies may provide additional support for those projects where appropriate.

The analysis results and recommendations were reviewed by the public and all State and local agencies in the region. Evaluation and comments were included in the SIP revision.

Basic Transportation Needs have been adequately addressed in the SIP, as part of the basic planning process performed by DVRPC and the State. Full public participation was provided and encouraged throughout the development of the transportation control plan.

EPA proposed to approve this portion of the SIP on February 3, 1983. No adverse public comments were received and, therefore, today's Notice grants final approval of this portion of the SIP.

#### II. Carbon Monoxide

The February 3, 1983 Notice, *supra*, proposed approval of the CO SIP submitted on June 30, 1982, with the exception of the I/M portion.

The October 24, 1983 submittal contains a request from the Commonwealth to extend the CO attainment date from June 30, 1983 to December 31, 1987. The need for this extension results from the delayed implementation of the I/M program.

The August 27, 1984 Notice, *supra*, proposed approval of this extension. No comments have been received. Except for the I/M portion, EPA is now publishing final approval of the CO portion of the SIP and the extension of the attainment date.

#### III. Additional Requirements

DVRPC has submitted an analysis which demonstrates that projects being completed in the Southeastern Pennsylvania area conform with the SIP and that resultant emissions will be at or below the RFP curve.

Adequate provision was included for expansive consultation with the public and officials from appropriate government agencies both during the SIP preparation and on a continuing basis thereafter.

The State has provided evidence of its commitment of adequate financial and staff resources to assure timely implementation of the SIP. In addition, all other requirements of Section 172(b) of the Clean Air Act and EPA's January 1981 policy on SIP revisions for extension areas have been satisfied by the plan submitted by DVRPC and Pennsylvania.

A description of the process for identifying transportation contingency measures is also included in the SIP.

#### D. Southwestern Pennsylvania Area

In addition to those portions of the SIP discussed under General Issues, the following elements of the O<sub>3</sub>/CO SIP have also been reviewed.

##### 1. Ozone

The Ozone SIP for the Southwestern Pennsylvania area was developed by the Southwestern Pennsylvania Regional Planning Commission (SPRPC), with modeling and stationary source input from the Department of Environmental Resources (DER).

##### 1. Emission Inventory

The mobile and area source inventory was developed by SPRPC, while the stationary source inventory was developed by DER and the Allegheny County Bureau of Air Pollution Control. The February 3, 1983 Notice, *supra*, stated that the inventory contained in the June 30, 1982 submittal was reviewed and found to be consistent with EPA guidance and requirements.

No public comments were received relative to this portion of the SIP and EPA is now approving it.

##### 2. Demonstration of Attainment/Modeling

The demonstration of attainment and modeling analysis contained in the June 30, 1982 submittal were proposed for approval in the February 3, 1983 Notice, *supra*. A detailed discussion of this portion of the SIP is contained therein and will not be repeated here.

No comments were received regarding the proposed approval and, therefore,

EPA is now approving this portion of the SIP.

#### 3. Reasonable Further Progress

A graphical demonstration that reasonable further progress (RFP) toward the attainment of the O<sub>3</sub> standard by December 31, 1987 will be accomplished is contained in the June 30, 1982 submittal. The February 3, 1983 Notice, *supra*, proposed approval of the RFP curve.

No comments were received regarding the proposed approval and, therefore, EPA is now approving this portion of the SIP.

#### 4. Stationary Source Controls

Requirements for the 1982 SIP's include Reasonably Available Control Technology (RACT) for: (a) All sources of Volatile Organic Compounds (VOC) covered by a Control Techniques Guidelines (CTG), and, (b) all remaining major stationary sources with the potential to emit more than 100 tons of VOC per year. EPA requires that the submittal either include legally enforceable measures to implement RACT for these sources, or else document the State's determination that the existing level of control represents RACT for each of these sources.

a. CTG Regulations: Pennsylvania has adopted acceptable RACT VOC regulations for all categories of CTG sources except Perchloroethylene Dry Cleaning. This regulation is discussed in the "General Issues" section of this notice. The State has also committed to adopt and implement RACT regulations for applicable VOC source categories after future EPA guidelines are published.

The February 3, 1983 Notice, *supra*, stated that this section of the SIP was acceptable. However, the October 24, 1983 submittal contains a revised schedule for the adoption of any Round III CTG's issued by EPA. This revised schedule and EPA's proposed action are fully discussed in this Section of the Philadelphia SIP evaluation (see above).

b. Regulations for 100 Ton Per Year Sources: The February 3, 1983 Notice, *supra*, proposed to disapprove this portion of the SIP due to the lack of Reasonably Available Control Technology (RACT) regulations for sources emitting more than 100 tons per year of VOC's.

The August 27, 1984 Notice, *supra*, proposed to approve this portion of the SIP based on material submitted subsequent to the June 30, 1982 SIP.

On November 1, 1982 Allegheny County submitted a commitment and schedule to develop, adopt and



implement RACT regulations for the three major, non-CTG sources located in the County. Furthermore, DER has now certified that no major VOC sources exist outside Allegheny County in the Southwestern Pennsylvania area.

On November 15, 1983, Allegheny County Bureau of Air Pollution Control submitted the results of the study undertaken pursuant to the November 1, 1982 letter. Of the four sources investigated, two, USS Chemicals and PPG Industries, were found to have RACT or better already in place. The third source, Neville Chemical, emits substantially less than 100 TPY and the fourth, Wiseman Oil Corp., purchased by Breslube of Canada has been shut down. EPA reviewed Allegheny County's findings and confirmed our agreement with these results on February 29, 1984. The requirement that these RACT controls be maintained and operated is contained in the individual source permits.

No public comments, relative to this portion of the SIP, were received in response to either Federal Register Notice. EPA is today publishing final approval of this portion of the SIP, as amended.

#### 5. Transportation Control Measures

The February 3, 1983 Notice, *supra*, proposed approval of this portion of the SIP. No comments were received and EPA is now taking final action to approve this portion of the SIP.

#### II. Carbon Monoxide

The February 3, 1983 Notice, *supra*, proposed approval of the CO SIP, except for the I/M portion. The proposed approval is based on the modeling analysis and reasonable further progress demonstration which show that a 21.7% reduction in CO emissions is required and that a 35.2% reduction will, in fact, be achieved by the December 31, 1985 attainment data.

No public comments were received in response to this Notice and EPA is today approving this portion, except for I/M, of the SIP.

#### III. Additional requirements

The February 3, 1983 Notice, *supra*, proposed to approve this portion of the SIP. No public comments were received and EPA is today approving this portion of the SIP.

#### E. Allentown-Bethlehem-Easton Area

In addition to those portions of the SIP discussed under General Issues, the following elements of the O<sub>3</sub>/CO SIP have also been reviewed.

#### I. Ozone

1. Emission Inventory;
2. Demonstration of Attainment/Modeling;
3. Reasonable Further Progress;
4. Stationary Source Controls; and
5. Transportation Control Measures.

The February 3, 1983 Notice, *supra*, proposed approval of the June 30, 1982 SIP, except for I/M.

The August 27, 1984 Notice, *supra*, also proposed approval of this SIP, except for I/M, as revised by the October 24, 1983 submittal.

No public comments were received in response to either Notice and EPA is today approving this SIP, except for I/M.

#### II. Carbon Monoxide

The Allentown-Bethlehem-Easton area was originally designed as an attainment area for carbon monoxide. Therefore, no extension for attainment was requested and no 1982 SIP revision for CO is required.

#### III. Additional Requirements

The procedure used by DER and the Joint Planning Commission (JPC) of Lehigh and Northampton Counties in developing this SIP revision included measures that provided for sufficient consultation with State and local officials. The JPC has submitted an analysis showing that the projects being completed in the Allentown-Bethlehem-Easton area conform with the SIP. The conformity analysis has been adopted as a routine procedure to ensure conformity during project development and approval stages. A description of the process for identifying transportation contingency measures is also included in the SIP. In addition, EPA believes the plan developed by Pennsylvania and the JPC meets all other requirements of Section 172(b) of the Clean Air Act.

The February 3, 1983 Notice, *supra*, proposed approval of this portion of the SIP and no public comments were received in response. EPA is today publishing final approval of this portion of the SIP.

#### F. Public Comments

The 1982 O<sub>3</sub>/CO SIP was originally submitted by the Commonwealth on June 30, 1982. This submittal was the subject of a Federal Register Notice published on February 3, 1983 at 48 FR 5096. It was also included in the material that was the basis for another Notice published by EPA on February 3, 1983 at 48 FR 5022.

This second Notice was "national" in scope and dealt primarily with proposed disapproval actions and the proposed

imposition of sanctions pursuant to Sections 110(a)(2)(I), 176(a), 176(b), and 316(b) of the Clean Air Act. Today's Notice deals with those actions proposed in the February 3, 1983 Notice at 48 FR 5096. We are not, at this time, addressing the issues raised in the other Notice (48 FR 5022).

Several public comments were received in response to the Notice. These comments are addressed in detail in the Technical Support Document, which is available at the addresses listed earlier in this Notice, and are briefly summarized below.

Two citizen groups and the State of New Jersey submitted letters supporting EPA's proposed disapproval.

A business association and a corporation in the Philadelphia area disagreed with the proposed disapprovals. Their comments were based on a modeling study performed by a private contractor that showed the Philadelphia area would in fact attain the O<sub>3</sub> standard by December 31, 1987. This study conflicted with the modeling analysis included in the June 30, 1982 SIP, was not submitted as part of the SIP, and, therefore, was not subject to the EPA review process.

The remaining comments, from the Allegheny County Health Department, Penn DOT, and DER, dealt primarily with the proposed disapproval of the I/M portion of the SIP and the proposed sanctions. These elements are not part of today's rulemaking and, therefore, any comments relative to this portion of the SIP are not germane to this action. These comments will be addressed in a separate rulemaking action when DER submits the I/M regulations.

The October 24, 1983 submittal, which was the subject of the August 27, 1984 Federal Register Notice (49 FR 33902), corrected all of the deficiencies, except I/M cited in the February 3, 1983 Notice, *supra*. Therefore, the comments received earlier are now moot. No public comments were received in response to the August 27, 1984 Notice, *supra*.

#### Administrative Procedures

Based on the reviews discussed above, EPA is now approving the following portions of Pennsylvania's 1982 Ozone and Carbon Monoxide SIP. This applies to all three areas, unless otherwise noted.

1. Public Hearings;
2. Emission Inventory;
3. Demonstration of Attainment/Modeling;
4. Reasonable Further Progress;
5. Stationary Source Control Measures, except for the



**Perchloroethylene Dry Cleaning Regulation:**

6. Transportation Control Measures;
7. Additional Requirements; and
8. Carbon Monoxide Plans, except for I/M.

EPA is taking no action at this time on the following portions of this SIP:

1. I/M.
2. Perchloroethylene Dry Cleaning Regulations.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any EPA response, are available for public inspection at the EPA, Region III address listed earlier in this Notice.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Ozone, Carbon monoxide, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the Commonwealth of Pennsylvania was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 12, 1985.

Lee M. Thomas,

Acting Administrator.

Authority: Secs. 110(a), 172(b), and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410(a), 7502(b), and 7601(a)).

**PART 52—[AMENDED]**

Part 52 of Title 40, Code of Federal Regulations, is amended as follows:

**Subpart NN—Pennsylvania**

1. Section 52.2020, Identification of Plan, is amended by adding the following paragraph (c)(63):

**§ 52.2020 Identification of plan.**

(c) . . .

(63) The 1982 Ozone and Carbon Monoxide plan, except for the Inspection and Maintenance portion and the Perchloroethylene Dry Cleaning regulation, for the Southeastern, Southwestern, and Allentown-Bethlehem-Easton areas submitted by the Commonwealth on June 30, 1982 and October 24, 1983.

2. Section 52.2022, Extensions, is amended by revising paragraph (e) as follows:

**§ 52.2022 Extensions.**

(e) The Administrator hereby extends the dates for attainment of the national ambient air quality standard for carbon monoxide to December 31, 1987 in Philadelphia County and to December 31, 1985 in Allegheny County.

3. Section 52.2034, Attainment dates for national standards, is amended by revising Footnote 1e. to read as follows:

**§ 52.2034 Attainment dates for national standards.**

Note 1.— . . .

e. December 31, 1987

[FR Doc. 85-4118 Filed 2-25-85; 8:45 am]  
BILLING CODE 8560-50-M

**40 CFR Part 52**

[TN-002; A-4-FRL-2782-3]

**Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration Regulations**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On October 27, 1982 (47 FR 47807) EPA proposed approval of prevention of significant deterioration (PSD) regulations submitted by Tennessee with the understanding that certain changes would be made by the State. Most of the required changes have been submitted by Tennessee and are considered adequate. In addition, the State has submitted a letter committing to include a caveat concerning the applicability of EPA stack height regulations to all affected permits. Therefore, EPA is today approving the majority of the PSD regulations for Tennessee, is deferring action on that portion of Tennessee's PSD regulations dealing with exempting vessel emissions, and is not approving that portion of Tennessee's PSD regulations dealing with innovative technology waivers.

**EFFECTIVE DATE:** This action is effective March 28, 1985.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:  
Public Information Reference Unit,  
Library Systems Branch,

Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460

Air Management Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365

Office of the Federal Register, 1100 L Street N.W., Room 8401, Washington, D.C. 20005

Tennessee Air Pollution Control Division, 150 9th Avenue North, Nashville, Tennessee 37203.

**FOR FURTHER INFORMATION CONTACT:**

Mr. Michael T. Cooper, Air Management Branch, EPA Region IV at the above address and telephone number 404/381-3286 or FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** On December 5, 1974, EPA published regulations under the 1970 version of the Clean Air Act for the prevention of significant air quality deterioration (PSD). These regulations established a program for protecting areas with air quality cleaner than the national ambient air quality standards (NAAQS). The Clean Air Act Amendments of 1977 mandated certain immediately effective changes in EPA's PSD regulations, and established comprehensive new PSD requirements which are to be incorporated by states into their implementation plans. On June 19, 1978 (43 FR 26380), and August 7, 1980 (45 FR 52676), EPA promulgated guidance to assist states in preparing state implementation plan (SIP) revisions meeting the new requirements.

The State of Tennessee has complied with these requirements and has adopted and submitted on December 9, 1981, a new rule 1200-3-9-.01-(4) for the review of new sources. On May 25, 1982, the State submitted draft revisions to the original submittal. On April 22, 1983, the State submitted the final revisions to rule 1200-3-9-.01-(4). On September 1, 1983, the State submitted revisions to subparagraph 1200-3-9-.01-(4)-(b). Provisions of Tennessee's PSD regulations include a listing of sources considered to be major sources, what constitutes maximum allowable increases (increments) for Class I, II, and III areas, public participation requirements, procedures for areas violating increments, requirements for sources impacting Class I areas, and procedures for innovative control technology waivers. In addition, Tennessee's regulations specify what sources must apply best available control technology.

EPA proposed to approve Tennessee's PSD regulations and draft revisions in the October 27, 1982 Federal Register (47



FR 47607) with the understanding that specific changes would be made. Some of these changes (detailed below) have been made to EPA's satisfaction and EPA is today approving Tennessee's PSD regulations and revisions in part.

#### Revisions

1. Tennessee revised rule 1200-3-9-.01-(4)-(b)-11. to change the definition of "necessary preconstruction approvals or permits" to read "means all permits or approvals required under air quality control laws and regulations." This final revision was submitted to EPA on April 22, 1983, and is approved with the publication of this notice.

2. Tennessee revised rule 1200-3-9-.01-(4)-(b)-15. to change the definition of "baseline date" to read "means the earliest date after August 7, 1977, that a major stationary source or major modification submits a complete application to this Division 1200-3 or the EPA Administrator." Under the previous definition, Federally-issued PSD permits may not have triggered the baseline. This revision was submitted to EPA on April 22, 1983, and EPA approves it with the publication of this notice.

3. Tennessee revised rule 1200-3-9.01-(4)-(b)-18. to change the definition of "legally enforceable" to read, "means all limitations and conditions which are enforceable by the Technical Secretary and the EPA Administrator." This revision was submitted to EPA on September 1, 1983, and EPA approves it with the publication of this notice.

4. Tennessee revised its SIP to include Section 2.8.1.B.2, "Air Quality Modelling Guideline," thereby including all guidelines concerning approved EPA models and methods for approval of alternative models in their SIP. The State indicated they would do this in the May 25, 1982, submittal of draft revisions and submitted the revision on April 14, 1983. EPA approved it in the July 27, 1984 Federal Register (49 FR 30177).

5. Tennessee's PSD SIP submittal contains a provision (paragraph(m)-3.) which requires sources to obtain emissions offsets to cure predicted violations of PSD increments or air quality standards if the violations are covered under Tennessee's new source review provisions for nonattainment areas. EPA requires that increment and standard violations must be prevented in all attainment and unclassifiable areas, not just where nonattainment new source review applies. Tennessee agreed to make a change in this provision in response to EPA concerns that the regulation was not comprehensive enough in its coverage of sources, i.e., sources in attainment and

unclassified areas were not covered. This was indicated in the Federal Register proposal. Since the time of the proposal, Tennessee has clarified in a letter dated January 17, 1985, that the reference to new source review in nonattainment areas in their PSD regulations was oversight on their part. The satisfaction of increment requirements for a PSD source was not intended to be contingent upon applicability to nonattainment review. The Tennessee Department of Health and Environment has revised Rule 1200-3-9-.01-(4)-(m)-3. and is awaiting approval by the State Attorney General. In the meantime, Tennessee will implement the rule as it was originally intended, pursuant to a September 5, 1984 letter from Tennessee.

6. Tennessee's original PSD submittal did not include a procedure for notifying EPA and Federal Land Managers concerning a PSD permit affecting a Class I area as required. The draft revisions did require notice of permit applications and preliminary determinations, but as pointed out in the proposal notice, the notification requirement should also include notification of public hearings, final determinations, and permits issued. Tennessee has revised rule 1200-3-9-.01-(4)-(n)-1. to provide for this and submitted the revision to EPA on April 22, 1983. EPA approves it with the publication of this notice. Additionally, Tennessee's rule 1200-3-9.01-(4)(n)-1 requires notification of permit applications for sources which would significantly ( $1 \mu\text{g}/\text{m}^3$ , 24 hour average) impact a Class I area. At the request of EPA, Tennessee has agreed to also voluntarily notify the Federal Land Manager of proposed projects within 100 km of a Class I area. This agreement is documented in EPA Region IV's file. It is noted here that by the delegation letter of June 15, 1981, EPA relinquished to Tennessee the authority to enforce EPA's PSD regulations which were then in effect. This letter also gives Tennessee the authority to enforce all permits issued by EPA under 40 CFR 52.21.

7. Tennessee revised rule 1200-3-9-.01-(4)-(o)-2. to require only consultation with Governor(s) of affected states when an innovative technology waiver is granted instead of requiring the consent of the Governor(s), as required by EPA. EPA therefore disapproves this regulation because it conflicts with EPA PSD regulations and is retaining the permitting authority for sources using innovative control technology where other states are affected.

Under the PSD program, Tennessee will be issuing permits and establishing emission limitations that may be affected by the required revisions of EPA's stack height regulations. For this reason, EPA has required that the State include the following caveat in all potentially affected permit approvals until the stack height regulations are revised by EPA:

"In approving this permit, the Tennessee Department of Health and Environment has determined that the application complies with EPA's proposed amended stack height regulations published on November 9, 1984 (49 FR 44878). Once EPA promulgates final amended stack height regulations pursuant to the court remand in *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir., 1983), this permit may be subject to modification. This may result in revised emission limitations or may affect other actions taken by the source owners or operators."

Tennessee has made a commitment to include this type of caveat in all PSD permits which may be affected by the stack height regulations in a letter dated September 5, 1984.

Tennessee's definition of "stationary source" specifically excludes "the activities of any vessel." This has the effect of not regulating under PSD those sources which are major due to emissions of vessels associated with the source. As this exclusion is not currently approvable, EPA is deferring further action on it pending EPA's final rulemaking on the issue. By letter dated September 5, 1984, the Tennessee Air Pollution Control Board has agreed to adopt regulations conforming to EPA requirements. In the intervening time period before Tennessee adopts those regulations, EPA shall retain authority for those permits which involve vessel emissions where a source is not willing to include all vessel emissions in the definition of source. Due to the narrow nature of the nonconforming exemption, these instances are expected to be extremely rare.

**Action.** EPA is today approving the major portion of Tennessee's PSD regulations (with two exceptions) because they meet EPA criteria and the state has satisfactorily made changes in their revisions as specified in the proposal notice. The two exceptions are as follows:

1. The phrase "except the activities of any vessel" included in the definition of "stationary source" in subparagraph 1200-3-9-.01-(4)-(b)-6. EPA is deferring further action on this provision pending EPA's final rulemaking on the issue of inclusion of vessel emissions. EPA



retains authority for those permits which involve vessel emissions where a source is not willing to include all vessel emissions in the definition of source.

2. EPA today disapproves subparagraph 1200-3-9-.01(4)-(c)-2. of Tennessee's rule 1200-3-9 because it is inconsistent with EPA PSD requirements. Tennessee requires only consultation with Governor(s) of affected states when innovative technology waivers are granted, whereas EPA requires that states obtain the consent of the Governor(s) of affected states. EPA reserves the permitting authority for sources requesting innovative technology waivers where there is a significant impact on a state(s) adjacent to Tennessee.

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

**Note.**—The Director of the Federal Register approved the incorporation by reference of the Tennessee State Implementation Plan on July 1, 1982.

#### List of Subjects in 40 CFR Part 52

Air pollution control, intergovernmental relations, ozone, sulfur oxides, nitrogen dioxide, lead, particulate matter, carbon monoxide, hydrocarbons, Incorporation by reference.

(Sec. 110 and 161 of the Clean Air Act (42 U.S.C. 7410 and 7471).)

Dated: February 15, 1985.

Lee M. Thomas,  
Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

#### Subpart RR—Tennessee

1. Section 52.2220 is amended by adding paragraph (c)(62) as follows:

##### § 52.2220 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(62) Regulations for the prevention of significant deterioration, submitted on December 9, 1981, April 22 and September 1, 1983, and clarifications submitted on September 5, 1984, and January 17, 1985 by the Tennessee Department of Health and Environment. (Action has been deferred on the phrase "except the activities of any vessel" in 1200-3-9-.01(4)(b) until EPA revises the definition of stationary source.)

2. Section 52.2233 is amended by revising paragraphs (a) and (b) to read as follows:

##### § 52.2233 Significant deterioration of air quality.

(a)(1) Paragraph 1200-3-9-.01(4)-(c)-2. of Tennessee's regulations is disapproved because it does not require that the consent of the Governor(s) of affected states be obtained when innovative technology waivers are granted. EPA retains permitting authority for sources requesting innovative technology waivers which would significantly impact air quality in adjacent states.

(2) Tennessee's definition of "stationary source" specifically excludes "the activities of any Vessel." This exclusion is not currently approvable and EPA is deferring action on it pending final rulemaking on the issue. EPA retains authority for permits which involve vessel emissions where a source is not willing to include all vessel emissions in the definition of source.

(b) The requirements of 52.21 (b) through (w) are hereby incorporated by reference and made part of the applicable SIP for the State of Tennessee for the following purposes:

(1) Permitting of sources requesting innovative technology waivers which would significantly impact air quality in adjacent states.

(2) Permitting of sources involving vessel emissions where the source is unwilling to include all vessel emissions in the definition of source.

[FR Doc. 85-4363 Filed 2-25-85; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 81

[A-2-FRL-2780-8]

#### Designation of Areas for Air Quality Planning Purposes; Revision to Section 107 Attainment Status Designations for New York State

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule; Correction.

**SUMMARY:** This notice adds the regulatory language omitted from a published Final Rule which approved a redesignation, under Section 107(d) of the Clean Air Act, of the Hudson Valley Air Quality Control Region in New York State. This area was redesignated to "better than national standards" with respect to the ozone national ambient air quality standard in a Federal Register notice published on January 28, 1985 (50 FR 3755).

#### FOR FURTHER INFORMATION CONTACT:

William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

Dated: February 14, 1985.

Christopher Daggett,

Regional Administrator, Environmental Protection Agency.

The final rule published on January 28, 1985, beginning on page 3755 is corrected on page 3756 by adding the following text after the signature in the third column:

#### PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

Title 40, Chapter I, Subchapter C; Part 81, Code of Federal Regulations is amended as follows:

#### Subpart C—Section 107 Attainment Status Designations

##### § 81.333 [Amended]

1. Section 81.333 is amended by revising the ozone attainment status designation table as follows:

In the table labeled "New York—Ozone," revise the entire entry for the Hudson Valley AQCR as follows:

| Designated area    | Does not meet primary standards | Cannot be classified or better than national standards |
|--------------------|---------------------------------|--------------------------------------------------------|
| Hudson Valley AQCR |                                 | X                                                      |

(Secs. 107 and 301 of the Clean Air Act, as amended (42 USC 7407, 7601))

[FR Doc. 85-4228 Filed 2-25-85; 8:45 am]

BILLING CODE 6560-50-M



# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Public Health Service

### 42 CFR Part 110

#### Health Maintenance Organizations

##### Correction

In FR Doc. 85-3740 beginning on page 6171 in the issue of Thursday, February 14, 1985, make the following correction: On page 6175, in the third column, in the paragraph designated 16, the word "In" should read "Remove".

BILLING CODE 4160-16-M

## Office of the Secretary

### 48 CFR Part 309

#### Debarment, Suspension, and Ineligibility of Contractors

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** The Office of the Secretary, Department of Health and Human Services, is amending the HHS Acquisition Regulation, Title 48 CFR Chapter 3, by adding a new subpart concerning debarment, suspension, and ineligibility of contractors. This new subpart will implement the provisions of Subpart 9.4, Debarment, Suspension and Ineligibility, of the Federal Acquisition Regulations.

**EFFECTIVE DATE:** February 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Frederick J. Brennan, Procurement Analyst, Office of Procurement and Logistics Policy (202 245-8771).

**SUPPLEMENTARY INFORMATION:** On June 14, 1984, the proposed rule concerning debarment, suspension and ineligibility was published in the *Federal Register* (49 FR 24552) and invited public comment by July 16, 1984. No comments were received. Therefore, the Department considers the regulation acceptable as written with the following minor changes:

(1) The definition of the terms "debarment official" and "suspending official" have been changed to state that the Assistant Secretary for Management and Budget, or a designee, is that official.

(2) A definition of "initiating official" has been added. The regulation defines who that official may be and further states that this official is responsible for preparing a report concerning an apparent cause for debarment or suspension.

This rule will not have a significant economic impact on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. Law 96-354, 5 U.S.C. 601, *et seq.*).

This is not a major rule as defined by Executive Order 12291 of February 17, 1981.

The provisions of this amendment are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

#### List of Subjects in 48 CFR Part 309

Government procurement.

Title 48 CFR Chapter 3 is amended as set forth below.

Dated: February 20, 1985

Henry G. Kirschenmann, Jr.,  
Deputy Assistant Secretary for Procurement,  
Assistance and Logistics.

### PART 309—CONTRACTOR QUALIFICATIONS

1. The authority citation for Part 309 continues to read:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

2. Under Part 309, Contractor Qualifications, Subpart 309.4, Debarment, Suspension, and Ineligibility, is added as set forth below, and the table of contents for Part 309 is amended to add the following:

#### Subpart 309.4—Debarment, Suspension, and Ineligibility

Sec.

- 309.403 Definitions.
- 309.404 Consolidated List of Debarred, Suspended and Ineligible Contractors.
- 309.405 Effect of listing.
- 309.405-1 Continuation of current contracts.
- 309.406 Debarment.
- 309.406-3 Procedures.
- 309.407 Suspension.
- 309.407-3 Procedures.
- 309.470 Reporting of suspected causes for debarment, suspension, or the taking of evasive actions.
- 309.470-1 Situations where reports are required.
- 309.470-2 Contents of reports.

#### Subpart 309.4—Debarment, Suspension, and Ineligibility

##### 309.403 Definitions.

"Debarment official" means the Assistant Secretary for Management and Budget, or designee.

"Initiating official" means the contracting officer, or the head of the contracting activity, or the Deputy Assistant Secretary for Procurement, Assistance and Logistics, or the Inspector General.

"Suspending official" means the Assistant Secretary for Management and Budget, or designee.

#### 309.404 Consolidated List of Debarred, Suspended and Ineligible Contractors.

(c) The Office of Procurement, Assistance and Logistics (OPAL) shall perform the actions required by FAR 9.404(c)(1)-(3).

(4) OPAL shall maintain all documentation submitted by the initiating official recommending the debarment or suspension action and all correspondence and other pertinent documentation generated during the OPAL review.

#### 309.405 Effect of listing.

(a) The head of the contracting activity may, with the concurrence of the debarment or suspending official, make the determinations referenced in FAR 9.405(a), regarding contracts for their respective activities.

(1) If a contracting officer considers it necessary to award a contract, or consent to a subcontract with a debarred or suspended contractor, the contracting officer shall prepare a determination, including all pertinent documentation, and submit it through acquisition channels to the head of the contracting activity. The documentation must include the date by which approval is required and a compelling reason for the proposed action. Some examples of circumstances that may constitute a compelling reason for the award to, or consent to a subcontract with, a debarred or suspended contractor include:

- (i) The property or services to be acquired are available only from the listed contractor;
- (ii) The urgency of the requirement dictates that the Department deal with the listed contractor; or
- (iii) There are other compelling reasons which require business dealings with the listed contractor.

(2) If the head of the contracting activity decides to approve the requested action, he/she shall request the concurrence of the debarment or suspending official and, if given, shall, in writing, inform the contracting officer of the decision within the required time period.

#### 309.405-1 Continuation of current contracts.

(a) Notwithstanding the debarment or suspension of a contractor, contracting officers may continue contracts or subcontracts in existence at the time the contractor was debarred or suspended, unless the head of the contracting activity or debarment or suspending official directs otherwise. A decision as to the type of termination action, if any, to be taken should be made only after



review by the awarding activity's contracting and technical personnel. The contracting officer shall coordinate any termination with the Office of the General Counsel to ensure the propriety of the proposed action.

(b) Contracting officers shall not renew the current contracts of debarred or suspended contractors, or otherwise extend their duration, unless the head of the contracting activity determines to do so, with the concurrence of the debarring or suspending official. The contracting officer shall prepare a determination meeting the requirements of 309.405(a) and submit it, through acquisition channels, to the head of the contracting activity. If the head of the contracting activity agrees with the determination, he/she shall obtain the concurrence of the debarring or suspending official.

#### 309.406 Debarment.

##### 309.406-3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for debarment becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470-2, if known, and forward it through appropriate channels, with a written recommendation, to the debarring official. Contracting officers shall forward their reports in accordance with 309.470-1. The debarring official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The debarring official shall review the results of the investigation, if any, and make a written determination whether or not debarment procedures are to be commenced. A copy of the determination shall be promptly sent through appropriate channels to the initiating official, and the contracting officer, if necessary. If the debarring official determines to commence debarment procedures, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.406-3(c). If the proposed action is not based on a conviction or judgment and the contractor's submission in response to the notice raises a genuine dispute over facts material to the proposed debarment, the debarring official shall arrange for fact-finding hearings and take the necessary actions specified in FAR 9.406-3(b)(2). The debarring official shall also ensure that written findings of fact are prepared, and shall base the debarment decision on the facts as found, after considering information and argument submitted by the contractor

and any other information in the administrative record. The Office of the General Counsel shall represent the Department at any fact-finding hearing and may present witnesses for HHS and question any witnesses presented by the contractor.

#### 309.407 Suspension.

##### 309.407-3 Procedures.

(a) *Investigation and referral.* Whenever an apparent cause for suspension becomes known to an initiating official, that person shall prepare a report incorporating the information required by 309.470-2, if known, and forward it through appropriate channels, with a written recommendation, to the suspending official. Contracting officers shall forward their reports in accordance with 309.470-1. The suspending official shall initiate an investigation through such means as he/she deems appropriate.

(b) *Decisionmaking process.* The suspending official shall review the results of the investigation, if any, and make a written determination whether or not suspension should be imposed. A copy of this determination shall be promptly sent through appropriate channels to the initiating official and the contracting officer, if necessary. If the suspending official determines to impose suspension, he/she shall, after consultation with the Office of the General Counsel, notify the contractor in accordance with FAR 9.407-3(c). If the action is not based on an indictment and, subject to the provisions of FAR 9.407-3(b)(2), the contractor's submission in response to the notice raises a genuine dispute over facts material to the suspension, the suspending official shall, after suspension has been imposed, arrange for fact-finding hearings and take the necessary actions specified in FAR 9.407-3(b)(2).

#### 309.470 Reporting of suspected causes for debarment or suspension, or the taking of evasive actions.

##### 309.470-1 Situations where reports are required.

A report incorporating the information required by 309.470-2 shall be forwarded, in duplicate, by the contracting officer through acquisition channels to the OPAL when—

(a) A contractor has committed, or is suspected of having committed, any of the acts described in FAR 9.406-2 or FAR 9.407-2; or

(b) A contractor is suspected of attempting to evade the prohibitions of debarment or suspension imposed under this regulation, or any other comparable

regulation, by changes of address, multiple addresses, formation of new companies, or by other devices.

#### 309.470-2 Contents of reports.

Each report prepared under 309.470-1 shall be coordinated with the Office of the General Counsel and shall include the following information, where available:

(a) Name and address of contractor.

(b) Name of the principal officers, partners, owners, or managers.

(c) All known affiliates, subsidiaries, or parent firms, and the nature of the affiliation.

(d) Description of the contract or contracts concerned, including the contract number, and office identifying numbers or symbols, the amount of each contract, the amount paid the contractor and the amount still due, and the percentage of work completed and to be completed.

(e) The status of vouchers.

(f) Whether contract funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and, if so assigned, the name and address of the assignee and a copy of the assignment.

(g) Whether any other contracts are outstanding with the contractor or any affiliates, and, if so, the amount of such contracts, whether these funds have been assigned pursuant to the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15, and the amounts paid or due on such contracts.

(h) A complete summary of all available pertinent evidence.

(i) A recommendation as to the continuation of current contracts.

(j) An estimate of damages, if any, sustained by the Government as a result of the action of the contractor, including an explanation of the method used in making the estimate.

(k) The comments and recommendations of the contracting officer and statements regarding whether the contractor should be suspended or debarred, whether any limitations should be applied to such action, and the period of any proposed debarment.

(l) As an enclosure, a copy of the contract(s) or pertinent excerpts therefrom, appropriate exhibits, testimony or statements of witnesses, copies of assignments, and other relevant documentation or a written summary of any information for which documentation is not available.

[FR Doc. 85-4593 Filed 2-25-85; 8:45 am]

BILLING CODE 4150-04-M



## DEPARTMENT OF TRANSPORTATION

## Office of the Secretary

## 49 CFR Part 1

[OST Docket No. 1; Amdt. 1-201]

## Organization and Delegation of Powers and Duties; Office of the Secretary

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment establishes within the Office of the Secretary the Office of Commercial Space Transportation and delegates to the Director of the Office the authority assigned to the Secretary by Executive Order 12465. It also replaces the Director of Transportation Research and Technology with a Science and Technology Advisor reporting directly to the Secretary; this change will permit greater involvement of the Office of the Secretary in setting research and development priorities.

**DATE:** The effective date of this amendment is February 24, 1984.

**FOR FURTHER INFORMATION CONTACT:** Robert I. Ross, Office of the General Counsel, Department of Transportation, Washington, DC (202) 472-5580.

**SUPPLEMENTARY INFORMATION:** Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

Executive Order 12465 of February 24, 1984, "Commercial Expendable Launch Vehicles" (49 FR 7211; February 28, 1984) assigns to DOT responsibility for being the lead agency within the Federal government for encouraging and facilitating commercial expendable launch vehicle (ELV) activities by the United States private sector. The Order assigns to the Secretary of Transportation numerous responsibilities and authorities in this regard. To carry out these functions, the Secretary is establishing within the Office of the Secretary and Office of Commercial Space Transportation, headed by a Director reporting directly to the Secretary. This document amends the description of the Office of the Secretary to reflect establishment of this office and delegates all functions under the Executive Order to the Director.

This document also replaces the position of Director of Transportation Research and Technology with a Science and Technology Advisor to the Secretary. This change will permit greater involvement of the Office of the Secretary in setting research and development priorities.

## List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies), Transportation Department.

## PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.22, paragraph (a) is revised to read as follows:

## § 1.22 Structure.

(a) *Secretary and Deputy Secretary.* The Secretary and the Deputy Secretary are assisted by the Executive Secretary, the Contract Appeals Board, the Departmental Office of Civil Rights, the Office of Small and Disadvantaged Business Utilization, the Science and Technology Advisor, and the Office of Commercial Space Transportation. The Assistant Secretaries, the General Counsel, the Inspector General, and the Regional Representatives of the Secretary also report directly to the Secretary.

2. In § 1.23, paragraphs (i) through (n) are redesignated (j) through (o). redesignated paragraph (o) is revised, and a new paragraph (i) is inserted, to read as follows:

## § 1.23 Spheres of primary responsibility.

(i) *Science and Technology Advisor.* Principal advisor to the Secretary and Deputy Secretary on scientific and technical matters; scientific and technological representative of the Department to the academic community, private sector, professional organizations, and other Government agencies.

(o) *Office of Commercial Space Transportation.* Focal point within the Federal government for private sector space launch contacts and licensing

related to commercial expendable launch vehicle operations and for promotion and encouragement of commercial expendable launch vehicle industry.

3. Section 1.64 is revised to read as follows:

## § 1.64 Delegations to the Science and Technology Advisor.

The Science and Technology Advisor is delegated authority to:

(a) Serve as principal liaison official for the Department of Transportation with the Office of Science and Technology Policy in the Executive Office of the President.

(b) Serve as Chairperson of the Department of Transportation's Research and Development Management Council.

(c) Serve as Chairperson of the Department of Transportation Navigation Council.

4. A new § 1.68 is added, to read as follows:

## § 1.68 Delegations to Director of Commercial Space Transportation.

The Director of Commercial Space Transportation is delegated authority to—

(a) Carry out the functions assigned to the Secretary by Executive Order 12465 (February 24, 1984) relating to commercial expendable launch vehicle activities.

5. The table of contents for Part 1 is revised as follows:

(a) In lieu of "1.64 Delegations to Director of Transportation Research and Technology" insert—

Sec.  
1.64 Delegations to Science and Technology Advisor.

(b) After "1.67 Delegations to Maritime Subsidy Board" add—

1.68 Delegations to Director of Commercial Space Transportation

Authority: 49 U.S.C. 322.

Issued in Washington, DC, on February 12, 1985.

Elizabeth H. Dole,

Secretary of Transportation.

[FR Doc. 85-4654 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-02-M



# Proposed Rules

Federal Register

Vol. 50, No. 38

Tuesday, February 28, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 450

(Doc. No. 1154S)

#### Prune Crop Insurance Regulations

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Part 450 in Chapter IV of Title 7 of the Code of Federal Regulations to prescribe procedures for insuring prunes effective for the 1986 and succeeding crop years. The intended effect of this proposed rule is to provide insurance for prunes in response to many requests from producers and processors for such insurance protection, and to solicit public comment on such a program of insurance for consideration by the Board of Directors of FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 26, 1985, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1 (December 15, 1983). This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review

date established for these regulations is May 15, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

On January 9, 1985, the Secretary of Agriculture approved a docket authorizing the development but not the implementation of a program for insuring prunes. The publication of the proposed rule and the comments received will be used in that development. A final rule will not be published until an implementation docket is approved.

FCIC is soliciting comments on this proposed rule for 60 days after publication in the Federal Register. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington,

D.C., 20250, during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 450

Crop insurance, Prunes.

#### Proposed Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation proposes to issue a new Part 450 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part 450—Prune Crop Insurance Regulations, effective for the 1986 and succeeding crop years. Part 450 is added to read as follows:

#### PART 450—PRUNE CROP INSURANCE REGULATIONS

##### Subpart—Regulations for the 1986 and Succeeding Crop Years

- 450.1 Availability of prune crop insurance.
- 450.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 450.3 OMB control numbers.
- 450.4 Creditors.
- 450.5 Good faith reliance on misrepresentation.
- 450.6 The contract.
- 450.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

##### Subpart—Regulations for the 1986 and Succeeding Crop Years

###### § 450.1 Availability of prune crop insurance.

Insurance shall be offered under the provisions of this subpart on prunes in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

###### § 450.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for prunes which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.



(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

#### § 450.3 OMB control numbers.

The information collection requirements contained in these regulations (7 CFR Part 450) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

#### § 450.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, an involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

#### § 450.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the prune insurance contract, whenever (a) an insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation (1) is indebted to the Corporation for additional premiums, or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

#### § 450.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The

contract shall cover the prune crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

#### § 450.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the prune crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a prune contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Prune Crop Insurance Policy for the 1986 and succeeding crop years are as follows:

#### DEPARTMENT OF AGRICULTURE

##### Federal Crop Insurance Corporation

##### Prune—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

#### Terms and Conditions

1. Causes of loss.
  - a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:
    - (1) Adverse weather conditions;
    - (2) Fire;
    - (3) Wildlife;
    - (4) Earthquake;
    - (5) Volcanic eruption;
    - (6) Direct Mediterranean Fruit Fly damage; or
    - (7) Failure of the irrigation water supply after insurance attaches due to an unavoidable cause;
  - unless those causes are expected, excluded, or limited by the actuarial table or section 9e(4). Direct Mediterranean Fruit Fly damage will be actual physical damage to the prunes which causes such prunes to be considered unmarketable and shall not include unmarketability of such prunes as a direct result of a quarantine, boycott or refusal to accept the prunes by an entity without regard to actual physical damage.
  - b. We will not insure against any loss of production due to:
    - (1) The neglect, mismanagement or wrongdoing by you, any member of your household, your tenants or employees;
    - (2) The failure to follow recognized good prune farming practices;
    - (3) The impoundment of water by any governmental, public or private dam or reservoir project;
    - (4) Any cause not specified in section 1a as an insured loss;
    - (5) The failure to carry out a good prune irrigation practice, except failure of the water supply after insurance attaches due to an unavoidable cause; or
    - (6) The breakdown of irrigation equipment or facilities.
2. Crop, acreage, and share insured.
  - a. The crop insured will be any of the varieties of prune plums ("prunes") which are grown for the production of dried prunes on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.
  - b. The acreage insured for each crop year will be prunes grown on insurable acreage as designated by the actuarial table and in which you have a share; as reported by you or as determined by us, whichever we elect.
  - c. The insured share will be your share as landlord, owner-operator, or tenant in the insured prunes at the time insurance attaches.
  - d. We do not insure any acreage:
    - (1) Which is not irrigated except where provided by the actuarial table, or for which adequate facilities and water are not available at the time insurance attaches to carry out a good prune irrigation practice;
    - (2) On which the trees have not reached the seventh growing season after being set out unless we agree in writing to insure such acreage;



(3) Planted with a vine or tree crop other than prunes;

(4) Which we inspect and consider not acceptable; or

(5) A variety of prunes not established as adapted to the area or excluded by the actuarial table.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, and practice. You must report on our form:

- a. all the acreage of prunes in the county in which you have a share;
- b. the practice; and
- c. your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any prunes grown in the county. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. By applying for prune crop insurance, you authorize us to determine or verify your production and acreage from records maintained by the Prune Marketing Committee.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (seventh growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent (through adjustment to your approved yield) for each 1 percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches for each crop year on March 1 and ends at the earliest of:

- a. Total destruction of the prunes;
- b. The date harvest of the prunes (by variety) should have started;
- c. Harvest of the prunes;
- d. Final adjustment of a loss; or
- e. October 1.

8. Notice of damage or loss.

a. In case of damage or probable loss:

- (1) You must give us notice of:
- (a) The date(s) of damage; and
- (b) The cause(s) of damage.

(2) You must give us notice if during the period before harvest, the prunes on any unit are damaged and you decide not to further care for them.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss is later determined or if damage occurs during harvest, immediate notice must be given.

(5) If you are going to claim an indemnity on any unit, notice must be given not later than 48 hours:

- (a) After total destruction of the prunes;
- (b) Discontinuance of harvest on the unit;

or

(c) Before harvest would normally start if any acreage on the unit is not to be harvested.

(6) Unless notice has been given under subsection (5) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 30 days after the earliest of:

- (a) Harvest of the unit; or
- (b) October 1 of the crop year.

b. You must obtain written consent from us before you destroy any of the prunes which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

- (1) Total destruction of the prunes on the unit;
- (2) The date harvest should have started;
- (3) Harvest of the unit; or
- (4) October 1 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of prunes on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and/or marketing of the insured prunes under this contract from the prune packer or Prune Marketing Committee; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

- (1) Multiplying the insured acreage by the production guarantee;
- (2) Subtracting therefrom the total production of prunes to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production of natural condition prunes which grade substandard or better in accordance with the provisions of the Dry Fruit Association of California.

(1) Any production of prunes which grade substandard or a result of damage by insurable causes will be adjusted by:

- (a) Dividing the value per ton of such prunes by the market price per ton of standard prunes (of the same size count); and
- (b) Multiplying the result by the number of tons of such prunes.

(2) Appraised production to be counted will include:

- (a) Potential production lost due to uninsured causes and failure to follow recognized good prune farming practices;
- (b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent; and
- (c) Any unharvested production.

(3) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

- (a) Not harvested before the harvest of prunes becomes general in the county;
- (b) Harvested; or
- (c) Further damaged by an insured cause.

(4) When you have elected to exclude hail and fire as insured causes of loss and the prunes are damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(5) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure



to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

#### 10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact on committed any fraud relating to the contract, and such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

#### 12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all prunes produced on each unit including separate records showing the same information from any uninsured acreage. Any

person designate by us will have access to such records and the farm for purposes related to the contract.

#### 15. Life of Contract: cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by given written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and setoff are approved.

e. The cancellation and termination dates are January 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

#### 16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of terms.

For the purposes of prune crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which

show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding prune insurance in the county.

b. "Approved yield" means the yield established from your actual production records, which is approved by us and shown on our form.

c. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

3. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and is designated by the calendar year in which the prunes are normally harvested.

f. "Harvest" means picking of the prunes from the trees or ground either by hand or machine for the purpose of removal from the orchard.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Market price for standard prunes" means the price per ton shown on the processor's settlement sheet for each size count of standard prunes.

j. "Natural condition prunes" means prunes in the condition in which they normally come from a dry yard or dehydrator, as defined by the Dry Fruit Association of California.

k. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

m. "Standard prunes" means any natural condition prunes conforming with the applicable grading specifications in the Federal Marketing Agreement Order currently regulating the handling of prunes.

n. "Substandard prunes" means any natural condition prunes failing to meet the applicable grading specifications for standard prunes, as prescribed in the Federal Marketing Agreement Order currently regulating the handling of prunes.

o. "Tenant" means a person who rents land from another person for a share of the prunes or a share of the proceeds therefrom.

p. "Unit" means all insurable acreage of prunes in the county located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a



share in the prunes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. We will determine units as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

#### 20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on July 12, 1984.

Diana Moslak,

Acting Secretary, Federal Crop Insurance Corporation.

Dated: February 20, 1985.

Approved by:

Merritt W. Sprague,  
Manager.

[FR Doc. 85-4607 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-06-M

## 7 CFR Part 451

[Docket No. 15545]

### Canning Peach Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to issue a new Part 451 in Chapter IV of Title 7 of the Code of Federal Regulations prescribing procedures for insuring canning peaches effective for the 1986 and succeeding crop years. The intended effect of this rule is to provide insurance for canning peaches in

response to many requests from producers and processors for such insurance protection and to solicit public comment on such a program of insurance for consideration by the Board of Directors of FCIC. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

**DATE:** Written comments, data, and opinions on this proposed rule must be submitted not later than April 29, 1985, to be sure of consideration.

**ADDRESS:** Written comments on this proposed rule should be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

**FOR FURTHER INFORMATION CONTACT:** Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., 20250, telephone (202) 447-3325.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 15, 1989.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 (February 17, 1981), because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State, or local governments, or a geographical region; (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

The title and number of the Federal Assistance Program to which this proposed rule applies are: Title—Crop Insurance; Number 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

This action is exempt from the provisions of the Regulatory Flexibility

Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC is soliciting comments on this proposed rule for 60 days after publication in the Federal Register. All written comments made pursuant to this action will be available for public inspection in the Office of the Manager during regular business hours, Monday through Friday.

#### List of Subjects in 7 CFR Part 451

Crop insurance, Canning peaches.

#### Proposed rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to issue a new part in Chapter IV of Title 7 of the Code of Federal Regulations to be known as 7 CFR Part Canning Peach Crop Insurance Regulations, effective for the 1986 and succeeding crop years, to read as follows:

### PART 451—CANNING PEACH CROP INSURANCE REGULATIONS

#### Subpart—Regulations for the 1986 and Succeeding Crop Years

##### Sec.

- 451.1 Availability of canning peach crop insurance.
- 451.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 451.3 OMB control numbers.
- 451.4 Creditors.
- 451.5 Good faith reliance on misrepresentation.
- 451.6 The contract.
- 451.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

#### Subpart—Regulations for the 1986 and Succeeding Crop Years

##### § 451.1 Availability of canning peach crop insurance.

Insurance shall be offered under the provisions of this subpart on canning peaches in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop



Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

**§ 451.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for canning peaches which will be included in the actuarial table on file in applicable service offices for the county and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

**§ 451.3 OMB control numbers.**

The information collection requirements contained in these regulations (7 CFR 451) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007.

**§ 451.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

**§ 451.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the canning peach insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived, and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give

erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

**§ 451.6 The contract.**

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance on a form prescribed by the Corporation. The contract shall cover the canning peach crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

**§ 451.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the canning peach crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the *Federal Register* upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a canning peach contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at

Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Canning Peach Insurance Policy for the 1986 and succeeding crop years are as follows:

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

*Canning Peach—Crop Insurance Policy*

(This is a continuous contract. Refer to Section 15.)

**AGREEMENT TO INSURE:** We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application and "we," "us" and "our" refer to the Federal Crop Insurance Corporation.

**Terms and Conditions**

1. Causes of loss.  
a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Fire;
- (3) Wildlife;
- (4) Earthquake;
- (5) Volcanic eruption;
- (6) Direct Mediterranean Fruit Fly damage;

or  
(7) Failure of the irrigation water supply after insurance attaches due to an unavoidable cause;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3). Direct Mediterranean Fruit Fly damage will be actual physical damage to the peaches which causes such peaches to be considered unmarketable and shall not include unmarketability of such peaches as a direct result of a quarantine, boycott or refusal to accept the peaches by any entity without regard to actual physical damage to such peaches.

b. We will not insure against any loss of production due to:

- (1) The neglect, mismanagement or wrongdoing by you, any member of your household, your tenants or employees;
- (2) The failure to follow recognized good peach farming practices;
- (3) The impoundment of water by any governmental, public or private dam or reservoir project;
- (4) Split pits regardless of cause;
- (5) Any cause not specified in section 1a as an insured loss;
- (6) The failure to carry out a good peach irrigation practice, except failure of the water supply after insurance attaches due to an unavoidable cause; or
- (7) The breakdown of irrigation equipment or facilities.

2. Crop, acreage, and share insured.  
a. The crop insured will be any of the varieties of clingstone peaches ("peaches") which are grown for the production of canning peaches, which are grown on insured acreage and for which a guarantee and



premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be peaches grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured peaches at the time insurance attaches.

d. We do not insure any acreage:

(1) which is not irrigated or for which adequate facilities and water are not available at the time insurance attaches to carry out a good peach irrigation practice.

(2) on which the trees have not reached the fifth growing season after being set out unless we agree in writing to insure such acreage;

(3) planted with a vine or tree crop other than peaches;

(4) which we inspect and consider not acceptable; or

(5) a variety of peaches not established as adapted to the area or excluded by the actuarial table.

e. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. all the acreage of peaches in the county in which you have a share;

b. the practice; and

c. your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any peaches grown in the county. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you have submitted on this report. If you do not submit this report by the reporting date, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval. By applying for peach crop insurance, you authorize us to determine or verify your production and acreage from records maintained by the Cling Peach Advisory Board.

4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced one percent (through adjustment to your approved yield) for each one percent reduction in excess of ten percent.

c. Coverage level 2 will apply if you have not elected a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The

amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches for each crop on March 1 and ends at the earliest of:

a. total destruction of the peaches;

b. the date harvest of the peaches (by variety) should have started;

c. harvest of the peaches;

d. final adjustment of a loss; or

e. September 15.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us notice of:

(a) the date(s) of damage; and

(b) the cause(s) of damage.

(2) You must give us notice if during the period before harvest, the peaches on any unit are damaged and you decide not to further care for them.

(3) You must give us notice at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(4) If probable loss is later determined or if damage occurs during harvest, immediate notice must be given.

(5) If you are going to claim an indemnity on any unit, notice must be given not later than 48 hours:

(a) after total destruction of the peaches;

(b) discontinuance of harvest on the unit; or

(c) before harvest would normally start if any acreage on the unit is not to be harvested.

(6) Unless notice has been given under subsection (5) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 30 days after the earliest of:

(a) harvest of the unit; or

(b) September 15 of the crop year.

b. You must obtain written consent from us before you destroy any of the peaches which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the peaches on the unit;

(2) The date harvest should have started;

(3) Harvest of the unit; or

(4) September 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of peaches on the unit and that any loss of

production has been directly caused by one or more of the insured causes during the insurance period;

(2) Authorize us in writing to examine and obtain any records pertaining to the production and/or marketing of the insured peaches under this contract from the peach canner or Cling Peach Advisory Board; and

(3) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of peaches to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported and not on the actual information determined. All production from insurable acreage whether or not reported as insurable will count against the production guarantee.

e. The total production to be counted for a unit will include all harvested and appraised production which the California State Inspection Service grades U.S. No. 2 or better.

(1) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized good peach farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent; and

(c) Any unharvested production.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Not harvested before the harvest of peaches becomes general in the county;

(b) Harvested; or

(c) Further damaged by an insured cause.

(3) When you have elected to exclude hail and fire as insured causes of loss and the peaches are damaged by hail or fire, appraisals for uninsured causes will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

(4) The commingled production of units will be allocated to such units in proportion to our liability on the harvested acreage of each unit.

f. You must not abandon any acreage to us.

g. You may not bring suit or action against us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is mailed to and received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fee, or other charges in connection with any claim for indemnity, whether we approve or



disapprove such claim. We will, however, pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment from and including the 61st after the date you sign, date and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under Section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register semi-annually on or about January 1 and July 1. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) we determine to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) The amount by which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purposes of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

#### 10. Concealment of fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract, and such avoidance shall be effective as of the beginning of the crop year with respect to which such act or omission occurred.

#### 11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

#### 12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

#### 13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such rights. If we pay you for your loss then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

#### 14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all peaches produced on each unit including separate records showing the same information from any uninsured acreage. Any person designated by us will have access to such records and the farm for purposes related to due contract.

#### 15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish satisfactory records of the previous year's production to us on or before the cancellation date. If the insured, prior to the cancellation date, shows, to our satisfaction, that records are unavailable due to conditions beyond the insured's control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year. The assigned yield will not exceed the ten-year average.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity claim will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agriculture will be the date both such payment and setoff are approved.

e. The cancellation and termination dates are January 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for five consecutive years.

#### 16. Contract changes.

We may change any of the terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any changes

will be conclusively presumed in the absence of any notice from you to cancel the contract.

#### 17. Meaning of terms.

For the purposes of peach crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding peach insurance in the county.

b. "Approved yield" means the yield established from your actual production records, which is approved by us and shown on our form.

c. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

d. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

e. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and shall be designated by the calendar year in which the peaches are normally harvested.

f. "Harvest" means picking of the peaches from the trees either by hand or machine for the purpose of removal from the orchard.

g. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

h. "Insured" means the person who submitted the application accepted by us.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the peaches or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of peaches in the county located on contiguous land on the date insurance attaches for the crop year:

(1) in which you have a 100 percent share; or

(2) which is owned by one entity and operated by another entity on a share basis. Land rented for cash, a fixed commodity payment, or any consideration other than a share in the peaches on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office or by written agreement with us. Units may be determined as herein defined when the acreage is reported. Errors in reporting such units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any



member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

#### 18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

#### 19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

#### 20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Approved by the Board of Directors on July 12, 1984.

Diana Moslak,

*Acting Secretary, Federal Crop Insurance Corporation.*

Approved by:

Merritt W. Sprague,  
*Manager.*

Dated: February 20, 1985.

[FR Doc. 85-4611 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-06-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 21

[Docket No. NM-16; Notice No. SC-85-1-NM]

#### Special Conditions: Aerospatiale Model ATR-42 Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Aerospatiale Model ATR-42 series airplane which is to be assembled in France and imported into the United States. This airplane will have novel or unusual design features associated with an automatic takeoff power control system (ATPCS) for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. This notice contains the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety

equivalent to that established in the regulations.

**DATE:** Comments must be received on or before April 12, 1985.

**ADDRESS:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-16, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM-16. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** James Walker, Regulations and Policy Office, ANM-110, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2116.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM-16." The postcard will be dated, time stamped, and returned to the commenter.

##### Background

In February of 1982, Aerospatiale Division of Avions, 317 Route De Bayonne, 31060 Toulouse Cedex 3, France, applied for a United States Import Type Certificate for its Model ATR-42 series airplane.

The Model ATR-42 is a high wing, twin-engine, pressurized transport

category airplane having a maximum takeoff weight of 34,720 pounds. The airplane is equipped with two Pratt and Whitney PW-120 turbopropeller engines, each producing 2,000 shaft horsepower. The airplane has a maximum seating capacity for 50 persons, including the crew, and a maximum permissible altitude of 25,000 feet.

The type design of the Model ATR-42 series airplane with the automatic system installed contains a novel or unusual design feature for which the applicable airworthiness requirements do not contain adequate or appropriate safety standards. Special conditions are necessary to provide a level of safety equal to that intended by the established certification basis and to support a finding by the Administrator that no feature or characteristic of the airplane with the automatic system installed makes it unsafe for the category in which certification is requested. The proposed special conditions specify limits on the maximum power increment which may be applied to the operating engines by the ATPCS, prescribe system reliability and status monitoring requirements, require provisions for manual selection of the maximum takeoff power approved for the airplane under existing conditions, prohibit approval of the system if the automatic or manual application of maximum takeoff power would result in an engine operating limit being exceeded, and require the installation of an independent engine failure warning system if the inherent characteristics of the airplane do not provide a clear warning to the crew.

The novel or unusual design feature for the airplane is the installation of an automatic takeoff power control system (ATPCS). With the ATPCS "armed," takeoffs are normally made with engine power set at less than the maximum takeoff power approved for the airplane under the existing ambient environmental conditions. In the event of an engine failure during the takeoff, the ATPCS when "armed" or "on" automatically increases the fuel flow and the exhaust gas temperature (EGT) as maintained by the Single Red Line Limit (SRL). In the event of an ATPCS failure with an engine failure during the takeoff, the crew would be required to deactivate the system to achieve the maximum takeoff power. Because of this design feature where the pilot must move his hand from the power lever to activate the maximum condition, the Agency has determined that special conditions for airplanes with automatic limiters should be modified under



"Powerplant Controls" (par. E.2.b.) to provide that such activation is, permitted, provided the means to increase power is located on or forward of the power levers, is easily operated by either pilot, and meets the requirements of § 25.777.

The ATPCS proposed for the ATR-42 turbopropeller airplane performs the same function as the automatic takeoff thrust control system (ATTCS) does for the turbojet and turbofan powered transport airplanes. For setting power on the turbopropeller driven airplanes, horsepower (or torque) is used with the propeller converting the horsepower developed by the engine into forward thrust. For setting power on the turbojet or turbofan driven transport airplanes, fan speed ( $N_1$ ) or engine pressure ratio (EPR) is generally used. The  $N_1$  or EPR is proportional to the thrust that is developed by the turbojet or turbofan engines. Therefore, to make a distinction between turbopropeller airplane systems and the turbofan type, the different labeling of the two systems was made. The function of each is to convert developed engine power to forward thrust used during the takeoff.

The FAA developed special conditions for an ATTCS for current turbine-powered transport category airplanes and sent the proposal to U.S. user groups and various foreign civil aviation authorities for review and comment in November 1977. Comments were received and reviewed, and the special conditions were revised and sent to the same groups in May 1978. This procedure was repeated again in November 1978. Cooperating with the FAA in this development were the Aerospace Industries Association of America (AIA), Air Transport Association of America (ATA), Air Line Pilots Association (ALPA), Allied Pilots Association (APA), Rolls Royce (RR), Hawker Siddeley Aviation Limited (HS), British Civil Aviation Authority (CAA), the civil aviation authorities of Australia and Japan, the French Technical Commission Navigation (FTCN) and the French civil aviation authorities, Lockheed, Boeing, McDonnell Douglas, and Rockwell International.

Based on the comments received and on further review by the FAA, a number of changes were made to the proposed special conditions. These provide for consideration of the following specific matters:

#### 1. For the fail-operational system

proposed (able to perform its intended function after a single failure or combination of failures not shown to be extremely improbable within the ATTCS system), a reduction of the ATTCS failure probability from extremely improbable to improbable for the ATTCS alone, the addition of an extremely improbable failure probability for the combined ATTCS and engine failure, and deletion of the all-engine performance criteria.

2. For the nonfail-operational system proposed, a reduction in the failure probability from improbable to  $10^{-3}$  for the ATTCS alone, introduction of a climb gradient for the combined ATTCS and engine failure case, and deletion of an engine failure warning means if the inherent characteristics of the engine failure are clearly made known to the pilot.

3. Clarifying changes, including a graphical presentation to clarify the definition of the term, "Critical Time Interval."

The special conditions proposed herein differ in one major respect from similar special conditions which have previously been issued for other airplane models. The certification basis for the ATR-42 includes Amendment 25-23 to Part 25 of the FAR, which includes the requirements of § 25.1309(b)(2) of the FAR. Previous model airplanes to which special conditions for an ATTCS were applied do not have to meet the current requirements of § 25.1309(b)(2). The current requirements of § 25.1309(b)(2) are more stringent than the previous special condition requirements; therefore, the option to provide an ATPCS with reduced reliability if a specific level of minimum performance is available with both the ATPCS and an engine failed has been deleted from these special conditions.

#### Type Certification Basis

The type certification basis for the Aerospatiale Model ATR-42 airplane with the ATPCS installed, to be incorporated in the type certificate, is Part 25 of the FAR, including Amendments 25-1 through 25-54; Part 36 of the FAR, including Amendments 36-1 through current amendment; § 21.29 of the FAR; SFAR 27, dated December 12, 1973, including Amendments 27-1 through current amendment; and the proposed special conditions for an ATPCS contained in this Notice.

The applicable airworthiness

standards for import products are those regulations designated in accordance with § 21.29 and are known as the "type certification basis" for the airplane design. Special conditions may be issued and amended, as necessary, as a part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of the airplane. Special conditions, as appropriate, are currently issued after public notice in accordance with §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis in accordance with § 21.17(a)(2).

#### Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

#### List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation Safety.

#### The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions for the Aerospatiale ATR-42 series airplane equipped with an automatic takeoff power control system (ATPCS):

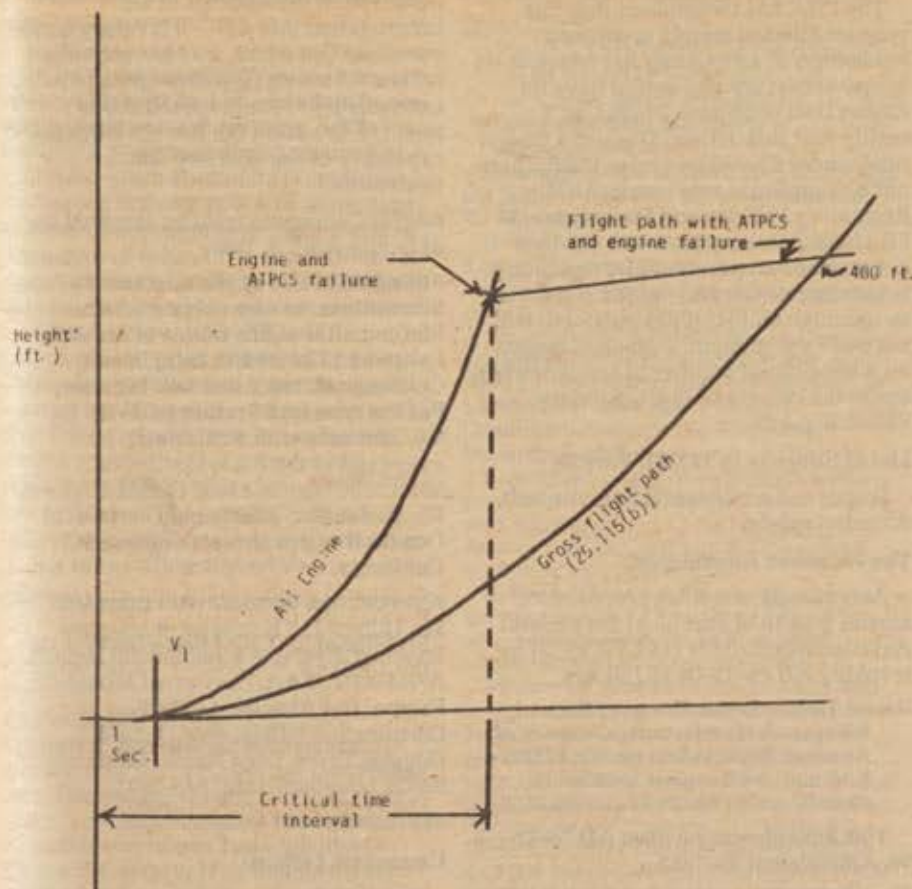
A. *General.* With the ATPCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase power.

#### B. Definitions.

1. *ATPCS.* An ATPCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled power increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATPCS takeoff, the critical time interval is between  $V_1$  minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATPCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at not less than 400 feet from the takeoff surface. This definition is shown in the following graph.





3. **Takeoff Power.** Notwithstanding the definition of "takeoff power" in Part 1 of the FAR, "takeoff power" means the horsepower obtained from each initial power setting approved for takeoff under these special conditions.

C. **Performance Requirements.** The applicant must comply with the following performance and reliability requirements.

1. An ATPCS system failure during the critical time interval must be shown to be improbable.

2. The concurrent existence of an ATPCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

3. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATPCS system functioning.

D. **Power Setting.** The initial takeoff power set on each engine at the beginning of takeoff roll may not be less than:

1. Ninety percent (90%) of the power level set by the ATPCS (the maximum takeoff power approved for the airplane under existing conditions);

2. That required to permit normal operation of all safety related systems and equipment dependent upon engine power or power lever position; or

3. That shown to be free of hazardous engine response characteristics when power

is advanced from the initial takeoff power level to the maximum approved takeoff power.

#### E. **Powerplant Controls.**

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATPCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATPCS must be designed to:

a. Apply power on the operating engine, following an engine failure during takeoff, to achieve the selected takeoff power without exceeding engine operating limits;

b. Permit manual decrease or increase in power up to the maximum takeoff power approved for the airplane under existing conditions through the use of the power lever, except that for aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of power controlled by the power levers in the event of an ATPCS failure. In this case, the means must be located on or forward of the power levers, must be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and must meet the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew prior to takeoff that the ATPCS is in a condition to operate; and

d. Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. **Powerplant Instruments.** In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATPCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATPCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.28 and 11.45)

Issued in Seattle, Washington, on February 12, 1985.

Charles R. Foster,

Director, Northwest Mountain Region

[FR Doc. 85-4570 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 39

[Docket No. 84-ANE-30]

### Airworthiness Directives; Garrett Turbine Engine Company TFE731-2-1C and -2-2B Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

**SUMMARY:** This notice proposes to revoke an existing airworthiness directive (AD) on Garrett Turbine Engine Company (GTEC) Model TFE731-2-1C and -2-2B engines. This action is needed because the AD continues to raise uncertainties regarding AD compliance although all the affected engines have already been modified in accordance with all provisions of the AD.

**DATE:** Comments must be received on or before April 8, 1985.

**ADDRESSES:** Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, Attn: Docket No. 84-ANE-30, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803 or delivered in duplicate to the above address, to Room 311.

Comments delivered must be marked: Docket No. 84-ANE-30.

Comments may be inspected at Room 311 between the hours of 8:00 a.m. and



4:30 p.m. Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Bill Moring, Aerospace Engineer, ANM-174W, Western Aircraft Certification Office, FAA, Northwest Mountain Region, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009, telephone (213) 536-6382.

#### SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, at the address given above, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 84-ANE-30". The postcard will be date/time stamped and returned to the commenter.

Amendment 39-1852 (39 FR 17848), AD 74-11-04 currently requires modification of the power section on GTEC (formerly AiResearch Manufacturing Company of Arizona) Model TFE731-2-1C and -2-2B engines. After issuing Amendment 39-1852, GTEC changed the engine maintenance record keeping procedure causing compliance with the AD to be repeatedly questioned by operators. The FAA has determined that all the affected engines have been modified in accordance with all provisions of AD 74-11-04. Therefore, the AD is no longer needed and should be revoked to eliminate the confusion and uncertainty still existing concerning compliance with its requirements.

#### Conclusion

The FAA has determined that this proposed action merely involves a revocation of an existing AD which is no longer necessary and would have no further cost or impact. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

#### The Proposed Amendment

Accordingly, the FAA proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by revoking AD 74-11-04 as follows:

**Garrett Turbine Engine Company** (formerly AiResearch Manufacturing Company of Arizona): Applicable to models TFE731-2-1C and -2-2B engines installed in aircraft, certificated in all categories.

This amendment revokes AD 74-11-04, Amendment 39-1852.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); 14 CFR 11.85)

Issued in Burlington, Massachusetts, on February 12, 1985.

Robert E. Whittington,  
Director, New England Region.

[FR Doc. 85-4565 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 84-NM-128-AD]

#### Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD) that would require modification of the forward and/or aft lavatory waste containers to improve the service life of the container and provide container sealing capability for enhanced fire containment on McDonnell Douglas DC-9 and C-9

(Military) series airplanes. This action results from the findings of an investigation into a DC-9 lavatory waste container fire which was not contained within the waste container prior to being extinguished. This proposed AD is required to assure the fire containment capability of the lavatory waste containers.

**DATES:** Comments must be received on or before April 8, 1985.

**ADDRESSES:** The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Gilbert L. Thompson, Aerospace Engineer, Systems & Equipment Branch, ANM-131L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption "AVAILABILITY OF NPRM." All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

##### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 84-NM-



128-AD, 17900 Pacific Highway South, C-68968, Seattle, Washington 98168.

#### Discussion

As part of an investigation of an uncontained fire in a DC-9 lavatory waste container, the Douglas Aircraft Company was requested to conduct actual fire containment tests on waste containers representative of those used in Model DC-9 airplanes. As a result of these tests, the FAA has determined that design changes are necessary in order to improve the fire containment capability of the waste container. This AD proposes to trim the container opening at the cleanout door; replace the upper waste door hinge half; and require the installation of an extension to the aft lavatory waste chute to assure the sealing of the waste container and thereby assure the capability of the container to contain fires likely to occur in that area during normal use.

#### Cost Estimate

It is estimated that 601 U.S. registered airplanes would be affected by this proposed AD, that it would take approximately 13.0 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The actual cost of modification parts is estimated to be \$339 per airplane. Based on these figures, the total cost of this proposed AD to U.S. operators is estimated to be \$516,259.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model DC-9 and C-9 (Military) series airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket. A copy may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

#### List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

#### The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation

Regulations (14 CFR 39.13) by adding the following new airworthiness directive:

**McDonnell Douglas:** Applies to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, certificated in all categories. Compliance required as indicated, unless previously accomplished.

To assure the fire containment capability of the lavatory waste containers, accomplish the following:

A. Within 18 months after the effective date of this airworthiness directive (AD), modify the forward and/or aft lavatory waste containers in accordance with the Accomplishment Instructions of McDonnell Douglas DC-9 Service Bulletin 25-259, dated April 11, 1984, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90848, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

(Sec. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.85)

Issued in Seattle, Washington, on February 7, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-4568 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 85-ANE-5]

**Amend the Description of the Chester, Connecticut; 700 foot Transition Area**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice (NPRM) proposes to amend the description of the Chester, Connecticut 700 foot Transition Area so as to provide protected airspace for aircraft executing a new RNAV Standard Instrument Approach

Procedure (SIAP) to Runway 17 at the Chester Airport, Chester, Connecticut.

**DATES:** Comments must be received on or before April 22, 1985.

**ADDRESSES:** Send comments to the Federal Aviation Administration, Office of the Regional Counsel, ANE-7, Attention: Rules Docket Clerk, Docket No. 85-ANE-5.

A public docket will be available for examination by interested persons in the Office of the Regional Counsel, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts.

An informal docket may also be examined during normal business hours in the: Air Traffic Division, ANE-500 Room 304, 12 New England Executive Park, Burlington, MA 01803.

**FOR FURTHER INFORMATION CONTACT:** John Boyce, Acting Manager, Operations, Procedures and Airspace, ANE-530, Federal Aviation Administration, Air Traffic Division, 12 New England Executive Park, Burlington, Massachusetts; telephone (617) 273-7141.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 85-ANE-5." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, ANE-7, 12 New England Executive Park, Burlington, Massachusetts 01803, both before and after the closing date for comments. A



report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, D.C. 20591, or by calling (202) 426-8085.

Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Chester, Connecticut 700 Foot Transition Area so as to provide protected airspace for instrument flight rules aircraft executing a new RNAV Runway 17 standard instrument approach procedure (SIAP) to the Chester Airport, Chester, Connecticut.

Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6 dated January 3, 1984.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend

71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

#### Chester, Connecticut Transition Area [Amended]

After "VOR," line five insert: "; and within that airspace bounded by a line to the northwest beginning at Lat. 43°25'30"N., Long. 72°35'10"W.; to lat. 43°27'20"N., Long. 72°38'30"W.; and a line to the northeast beginning at Lat. 43°26'25"N., Long. 72°28'35"W.; to lat. 43°32'50"N., Long. 72°26'45"W."

After Chester, Ct., line four delete: "and". (Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983; January 12, 1983)); and 14 CFR 11.65)

Issued in Burlington, Massachusetts, on February 13, 1985.

Robert E. Whittington,  
Director, New England Region.

[FR Doc. 85-4584 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

#### [Airspace Docket No. 85-ASO-5]

#### Proposed Designation of Transition Area; Tarboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to designate the Tarboro, North Carolina, transition area to accommodate instrument flight rule (IFR) operations at Tarboro-Edgecombe Airport. This action will lower the base of controlled airspace, in the vicinity of the airport, from 1,200 to 700 feet above the surface. An instrument approach procedure, predicated on the Tar River VORTAC, is being developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

**DATES:** Comments must be received on or before: April 10, 1985.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7846.

**FOR FURTHER INFORMATION CONTACT:** Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone: (404) 763-7846.

#### SUPPLEMENTARY INFORMATION:

#### Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. ———." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the



Federal Aviation Regulations (14 CFR Part 71) that will designate the Tarboro, North Carolina, transition area. This action will provide controlled airspace for aircraft executing a new instrument approach procedure to Tarboro-Edgecombe Airport. If the proposed designation of the proposed transition area is found acceptable, the operating status of the airport will be changed to IFR. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6A dated January 2, 1985.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

#### List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

#### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to designate the Tarboro, North Carolina, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

#### Tarboro, North Carolina—[New]

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tarboro-Edgecombe Airport (Latitude 38°57'00"N., longitude 77°33'00"W.).

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); 49 U.S.C. 106(g) (Revised, Public Law 97-449, January 12, 1983)); and 14 CFR 11.65)

Issued in East Point, Georgia, on February 14, 1985.

George R. LaCaille

Acting Director, Southern Region.

[FR Doc. 85-4567 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 950, 951 and 952

[Docket No. 75N-0075]

#### National Shellfish Safety Program; Withdrawal of Proposed Rule

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing its proposed regulations that would have established a National Shellfish Safety Program. The proposed regulations were published in the *Federal Register* of June 19, 1975 (40 FR 25916). The objective of the proposed regulations was to ensure the safety and sanitary quality of fresh and fresh frozen molluscan shellfish (oysters, clams, and mussels) sold in interstate commerce. FDA believes that alternative means of achieving this objective that will be equally effective now exist, and that the alternative means will not impose the burdens on the States or on industry that would have been created by the proposed regulations.

**ADDRESS:** Information that may assist FDA in revising the Manual of Operations of the National Shellfish Sanitation Program should be submitted to the Center for Food Safety and Applied Nutrition, Shellfish Sanitation Branch (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

#### FOR FURTHER INFORMATION CONTACT:

J. David Clem, Center for Food Safety and Applied Nutrition (HFF-344), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0149.

**SUPPLEMENTARY INFORMATION:** Fresh and fresh frozen molluscan shellfish that enter interstate commerce are now controlled for safety and sanitary quality through the voluntary National Shellfish Sanitation Program (NSSP). The NSSP includes all shellfish producing States, the shellfish industry, and seven foreign countries through agreements signed with the Public Health Service and FDA. State shellfish control agencies (under their individual statutory authorities) have promulgated regulations that reference the NSSP Manual of Operations (the Manual). The Manual provides recommended standards and administrative practices for the sanitary control of shellfish. Guided by the Manual, the State control programs exercise direct authority over

all necessary phases of the shellfish industry.

In the *Federal Register* of June 19, 1975 (40 FR 25916), FDA proposed to adopt National Shellfish Safety Program regulations to formalize the voluntary NSSP and the Manual and to strengthen the enforcement of the NSSP. The agency believed then that proposing Federal regulations would serve as an incentive to coastal States to improve their enforcement programs and would improve Federal-State cooperation. Specifically, the proposal would have required each State to have a comprehensive shellfish control plan, prohibited the interstate shipment of uncertified shellfish, required that foreign countries have an agreement with FDA before shipping shellfish to the United States, and established certain other standards for the harvesting, transporting, processing, and labeling of shellfish.

In response to the proposal, FDA received 274 comments from processors, harvesters, trade associations, State officials, State legislators, U.S. Senators and Congressmen, Federal officials, and other interested persons. In addition, the FDA-sponsored 9th National Shellfish Sanitation Workshop, which was held on June 25 and 26, 1975, in Charleston, SC, was devoted primarily to a discussion of the proposal. (A copy of the transcript of the Workshop is on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.)

Comments on the proposed regulations primarily asserted that the requirements would impose an undue economic hardship on the shellfish industry and on State governments. The industry was particularly concerned about a prohibition on co-mingling shellfish originating from different sources and about a requirement to maintain labels that identified the source of shellfish. It asserted that these provisions would not result in increased public health protection.

States were primarily concerned that they had insufficient resources to fully implement the proposed requirements and inadequate legislative support to impose substantial fines to deter violations. Without increased State resources and improved State legal deterrents, the States felt that Federal regulations would not increase public health protection. The comments also indicated that there was considerable confusion about the intent and interpretation of the proposed regulations.



FDA undertook an economic analysis of the data on the cost of the regulations that it received in comments. These data indicate that the molluscan shellfish industry would be required to expend \$24 million per annum to comply with the proposal, and that State governments would have to spend \$6.2 million per annum. (A copy of this economic analysis is also on file with the Dockets Management Branch (address above).)

Because of the concern expressed in the comments about the high cost of complying with the proposed regulations, and because of the apparent misunderstanding about certain provisions, on December 19, 1975, FDA announced its plans to publish a revised proposal (40 FR 5883). However, since this announcement, FDA has concluded that promulgation of the National Shellfish Safety Program regulations would not provide sufficient additional public health benefits to justify the additional costs to industry and to the States that they would create, and that other methods of assuring the safety of shellfish are available. Therefore, the agency has decided to withdraw the proposed regulations.

Support for FDA's decision to withdraw the 1975 proposal is found in the U.S. General Accounting Office's (GAO) 1984 report on shellfish entitled "Problems in Protecting Consumers from Illegally Harvested Shellfish (clam, mussels, and oysters)" (GAO/HRD 84-36; June 14, 1984). In this report, GAO points out that the 1975 proposal would not have remedied a number of significant problems in shellfish regulation. These problems include: (1) Insufficient State and local law enforcement staff to patrol closed harvesting areas; (2) low court-assessed fines that have little deterrent effect; (3) inadequate inspection of growing areas and surrounding properties; and (4) inability to trace contaminated shellfish to growing areas or persons harvesting them.

In the absence of Federal laws or regulations, the agency continues to be concerned, however, that state shellfish control agencies adopt and enforce updated NSSP guidelines in a uniform and timely manner. Consequently, FDA has explored strengthening the NSSP by means other than adopting the proposed regulations. In reviewing these other means, the agency noted that since 1950, there has been a successful voluntary public health program to assure a nationwide safe and wholesome milk supply. This program receives direction and advice from the National conference on Interstate Milk Shipments (IMS).

Because of the success of the program, FDA encouraged State shellfish control officials to study the IMS program, as a model for a similar shellfish organization.

Representatives from shellfish producing States had been meeting since 1979 to investigate means of achieving uniform shellfish sanitary control practices. Finally, a delegation of State officials from 22 States met in Annapolis, MD, in September 1982, and formed the ISSC. These officials patterned the ISSC after the IMS Conference.

The newly formed ISSC will permit State regulatory officials to establish uniform guidelines and to exchange reliable information on sources of safe shellfish. The ISSC has adopted the Manual as well as formal procedures that will enable it to adopt any changes in the Manual. FDA believes the ISSC will play an important role in assuring that uniform shellfish control measures are adopted, and that those measures are enforced consistently by State regulatory authorities.

GAO's recent report on shellfish regulation provides support for FDA's belief. The report presented three possible courses of action for regulating the shellfish industry. GAO admitted that each course of action has advantages and disadvantages, and that none addresses all of the problems associated with the regulation of shellfish, particularly the lack of sufficient State resources.

The first alternative GAO suggested is to leave regulatory authority with the States and to allow FDA to continue to function in an advisory capacity. The advantages to this alternative are that the States, who are most familiar with their own programs, could set their own goals and priorities, and that FDA would not need an increase in resources. The disadvantages of this alternative are (1) the lack of central authority; (2) the absence of a legal basis for program guidelines; (3) the lack of uniformity among State programs; and (4) the absence of a central forum for handling interstate disputes.

The second alternative presented by GAO is to grant specific regulatory authority to FDA to administer the shellfish program. Such a grant would alleviate some of the problems FDA has encountered in its attempt to formalize the NSSP. The advantages of this alternative are that program guidelines would become legally enforceable, and that FDA would assume a central position of authority. The disadvantages are the creation of (1) an adversary relationship between FDA and the

States; (2) an adverse effect on State programs; and (3) the need for a significant increase in resources for FDA.

The third alternative is to form a cooperative relationship among the States, FDA, and the shellfish industry in which each party has a voice in the direction of shellfish regulation, and each has specific duties and responsibilities. Under this option, compliance with program requirements would be achieved through the States exerting pressure on each other to comply with the guidelines. If one State chose not to comply with the guidelines, the others would not accept that State's products. The advantages are the creation of (1) a formal organization to effect change; (2) an open environment to discuss problems and settle interstate disputes; and (3) State self-imposed requirements for regulating shellfish that may be more effective than Federal regulation. The disadvantages are (1) that the "committee" process of regulation may be time-consuming, and (2) that a legal basis would have to be established for State actions.

The course of action FDA is announcing in this notice is in accord with alternatives 1 and 3. The agency has decided to revise and update the Manual and to continue to participate in the NSSP. In addition, the agency has entered into a Memorandum of Understanding (MOU) with the ISSC (see 49 FR 12751; March 30, 1984) thereby establishing a cooperative relationship with both the States and industry. FDA believes that its continued participation in the NSSP, its cooperation with the ISSC, and the revision of the Manual will provide the best means to assure that consumers receive molluscan shellfish that are safe and free from filth and decomposition.

FDA is confident that the ISSC will work to strengthen the controls on shellfish and will help FDA to ensure the safety and sanitary quality of oysters, clams, and mussels sold in interstate commerce. The basis for FDA's confidence is the ISSC's actions to adopt the Manual; to enter into the MOU; to model its organization after the successful IMS Program; and to obtain broad support from State control agencies, numerous public health organizations, and the shellfish industry.

In revising the Manual, FDA will use the following sources, among others:

- (1) Draft Revised Proposed National Shellfish Safety Program Regulations, Part 951;
- (2) National Shellfish Sanitation Program Manual of Operations, Part I, Sanitation of Shellfish Growing Areas;



Part II, Sanitation of Harvesting and Processing of Shellfish; and Part III, Appraisal of State Shellfish Sanitation Programs, 1965 Revision, U.S. Department of Health, Education, and Welfare, Public Health Service Publication No. 33;

(3) Written comments received by FDA in response to the proposed National Shellfish Safety regulations (40 FR 25916; June 19, 1975);

(4) National Shellfish Sanitation Program Workshop Proceedings for 1968, 1971, 1973, 1974, and 1977;

(5) Environmental Protection Agency rules and regulations (40 CFR Parts 400, et seq.) concerning water pollution control and shellfish waters;

(6) Other Federal laws, rules, and regulations concerning quality of shellfish and shellfish growing areas;

(7) Existing State rules and regulations concerning shellfish growing area control and water quality criteria;

(8) Analytical methods accepted by the American Public Health Association, Association of Official Analytical Chemists, American Society of Testing Materials, and other voluntary standards setting organizations relating to shellfish and shellfish waters;

(9) Publications of the World Health Organization and the Food and Agricultural Organization of the United Nations on fish and shellfish hygiene;

(10) FDA intramural and extramural shellfish safety research projects supported since 1973.

FDA invites the submission of any additional information that may assist the agency in revising the Manual.

Approximately 2 years will be required for FDA to draft the revisions. On August 8, 1984, FDA announced the availability of a working draft of Part I of the Manual, Sanitation of Shellfish Growing Areas (49 FR 31774). As soon as a redraft is completed, FDA will publish in the Federal Register an announcement of its availability for review and comment. In addition, the agency has and will continue to distribute copies of the draft to NSSP members and to persons who request a copy. Comments will be solicited for preparation of a final Manual.

In addition to working with the ISSC and revising the Manual, FDA will continue to participate in the NSSP. This participation will include:

(1) Periodic audits of State shellfish sanitation control programs to determine whether the controls applied will assure that only safe and sanitary shellfish are shipped in interstate commerce;

(2) Technical assistance and training

to State shellfish sanitary control officials;

(3) Shellfish safety research to evaluate health hazards and to improve guidelines and laboratory methods;

(4) Maintenance and promotion of bilateral agreements with foreign countries that export fresh and frozen shellfish to the United States; and

(5) Publication of the list of State and foreign certified interstate shellfish shippers.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 402, 403, 701(a), 801, 52 Stat. 1046-1048 as amended, 1055, 1056 as amended (21 U.S.C. 342, 343, 371(a), 381)) and the Public Health Service Act (secs. 301, 311, 361, 58 Stat. 691, 703 as amended (42 U.S.C. 241, 243, 264)) and under 21 CFR 5.11, the proposal to amend Chapter I of Title 21 of the Code of Federal Regulations by adding new Parts 950, 951, and 952 (40 FR 25916; June 19, 1975) is withdrawn.

The documents and reference sources supporting the decisions announced in this notice are on file with the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and are available for inspection between 9 a.m. and 4 p.m., Monday through Friday. Frank E. Young,

*Commissioner of Food and Drugs.*

Dated: February 4, 1985.

Margaret M. Heckler,

*Secretary of Health and Human Services.*

[FR Doc. 85-3963 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[LR-240-84]

#### Information Reporting Requirements for Mortgage Subsidy Bonds; Public Hearing

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the tax exempt status of mortgage subsidy bonds.

**DATES:** The public hearing will be held on Tuesday, April 30, 1985, beginning at 10:00 a.m. Outlines of oral comments

must be delivered or mailed by Tuesday, April 16, 1985.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-240-84), Washington, D.C. 20224.

#### FOR FURTHER INFORMATION CONTACT:

B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 103A of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Wednesday, December 12, 1984 (49 FR 48323).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, April 16, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

*Acting Director, Legislation and Regulations Division.*

[FR Doc. 85-4693 Filed 2-25-85; 8:45 am]

BILLING CODE 4830-01-M



## 28 CFR Part 1

(LR-144-84; LR-304-84)

**Limitations on Aggregate Amount of Private Activity Bonds and Carryforward Elections and Election To Allocate State Ceiling to Facilities for Local Furnishing of Electricity; Public Hearing****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Notice of public hearing on proposed regulations.**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the tax exempt status of private activity bonds and to carryforward elections and the election to allocate state ceiling to facilities for local furnishing of electricity.**DATES:** The public hearing will be held on Monday, April 22, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Monday, April 8, 1985.**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-144-84, LR-304-84), Washington, D.C. 20224.**FOR FURTHER INFORMATION CONTACT:** B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, telephone 202-566-3935 (not a toll-free call).**SUPPLEMENTARY INFORMATION:** One of the two subjects of the public hearing is proposed regulations under Treasury Regulations §§ 1.103(n)-1 through 1.103(n)-6. The proposed regulations appeared in the Federal Register for Friday, October 5, 1984 (49 FR 39344). By a notice appearing in the Federal Register for Wednesday, December 19, 1984, (49 FR 49310), it was announced that a public hearing on these proposed regulations relating to the tax exempt status of private activity bonds was scheduled to be held on Friday, January 11, 1985, beginning at 10:00 a.m. in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. Subsequently, by a notice appearing in the Federal Register for Friday, December 28, 1984 (49 FR 50406), it was announced that the public hearing was postponed until further notice.

The second subject of the public hearing is proposed regulations under section 103(n) of the Internal Revenue Code of 1954 and under section 644(b) of the Tax Reform Act of 1984. These proposed regulations contain amendments to the notice of proposed rulemaking which appeared in the Federal Register for Friday, October 5, 1984 (49 FR 39344). The proposed amendments appeared in the Federal Register for Friday, December 28, 1984 (49 FR 50404).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (28 CFR 601) shall apply with respect to the public hearing. Persons who have submitted comments within the time prescribed in the notices of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Monday, April 8, 1985, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Peter K. Scott,

Acting Director, Legislation and Regulations Division.

[FR Doc. 85-4694 Filed 2-25-85; 8:45 am]

BILLING CODE 4830-01-M

**DEPARTMENT OF JUSTICE****28 CFR Part 16****(AAG/A Order No. 23-84)****Exemption of Records Systems Under the Privacy Act****AGENCY:** Department of Justice.**ACTION:** Proposed rule.

**SUMMARY:** The Federal Bureau of Investigation proposes to exempt a new system of records entitled "National Center for the Analysis of Violent Crime (NCAVC), JUSTICE/FBI-015," from Title 5, U.S. Code, Section 552a (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g). The

purpose of these exemptions is to maintain the confidentiality and security of information compiled for law enforcement purposes. A determination will be made as to the exemption of a specific record at the time a request for access is received.

**DATES:** All comments must be received by March 28, 1985.**ADDRESS:** All comments should be directed to the Assistant Director, Administrative Services Staff, Room 6314, U.S. Department of Justice, Washington, D.C. 20530.**FOR FURTHER INFORMATION CONTACT:** Thomas F. O'Leary (202) 633-4414.

**SUPPLEMENTARY INFORMATION:** This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities".

**List of Subjects in 28 CFR Part 16**

Administrative practice and procedure, Courts, Freedom of Information, Privacy, and Sunshine Acts.

The authority for this proposed rule is 5 U.S.C. 552a. Accordingly, it is proposed that Title 28, CFR § 16.96, be amended by adding paragraphs (j) and (k) as follows:

**§ 16.96 Exemption of Federal Bureau of Investigation System-Limited Access.**

(j) The following system of records is exempt from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g):

(1) National Center for the Analysis of Violent Crime (NCAVC) (JUSTICE/FBI-015). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2) and (k)(2).

(k) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because providing the accounting of disclosures to the subject could prematurely reveal investigative interest by the FBI and other law enforcement agencies, thereby providing the individual an opportunity to impede an active investigation, destroy or alter evidence, and possibly render harm to violent crime victims and/or witnesses.

(2) From subsections (d), (e)(4) (G) and (H), (f) and (g) because disclosure to the subject could interfere with enforcement proceedings of a criminal justice agency, reveal the identity of a confidential



source, result in an unwarranted invasion of another's privacy, reveal the details of a sensitive investigative technique, or endanger the life and safety of law enforcement personnel, potential violent crime victims, and witnesses. Disclosure also could prevent the future apprehension of a violent or exceptionally dangerous criminal fugitive should he or she modify his or her method of operation in order to evade law enforcement. Also, specifically from subsection (d)(2), which permits an individual to request amendment of a record, because the nature of the information in the system is such that an individual criminal offender would frequently demand amendment of derogatory information, forcing the FBI to continuously retrograde its criminal investigations in an attempt to resolve questions of accuracy, etc.

(3) From subsection (e)(1) because it is not always possible to establish relevance and necessity of the information at the time it is obtained or developed. Information, the relevance and necessity of which may not be readily apparent, frequently can prove to be of investigative value at a later date and time.

Dated: February 7, 1985.

Anthony C. Liotta,  
Assistant Attorney General for  
Administration.

[FR Doc. 85-4586 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-02-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 76

[MM Docket No. 85-38; FCC 85-66]

#### Review of Technical and Operational Requirements, Cable Television

AGENCY: Federal Communications  
Commission.

ACTION: Proposed rule.

**SUMMARY:** The FCC proposes to delete quality performance standards for cable television systems. This action has become possible due to the increase in competition to cable from alternative video sources, such as, video cassette recorders. The Commission proposes to retain the regulations relating to leakage levels from cable systems due to the potential of cable systems to interfere with over-the-air radio services. A relaxation in the leakage limits is, however, proposed. Adoption of the proposals would result in a savings of approximately 51,200 burden hours each year by the industry.

**DATES:** Comments must be submitted by March 29, 1985, and reply comments submitted by April 15, 1985.

**ADDRESS:** Federal Communications  
Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:**  
Bernard Gorden, Mass Media Bureau,  
Phone (202) 632-9660.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 76

Cable television.

#### Proposed Rule Making

In the matter of review technical and operational requirements of Part 76, Cable Television (MM Docket No. 85-38).

Adopted: February 12, 1985.

Released: February 20, 1985.

By the Commission.

#### Introduction

1. Part 76 of the FCC Rules and Regulations currently contains several sections that define technical parameters that must be met by cable television (CATV) systems. The rules can be divided easily into two distinct categories: (1) Quality performance standards, and (2) interference control standards. At the time these rules were adopted, they were intended to define a basic quality of service to be expected by subscribers and to limit the interference potential to over-the-air radio services caused by leakage from CATV systems. In the past decade, since adoption of the technical parameters, the cable industry has matured and competition from other video services has significantly increased. It is therefore appropriate to re-examine and update the rules at this time.

#### Background

2. The present technical rules were adopted in 1972 as part of a general FCC proceeding entitled, "Cable Television Report and Order" (36 FCC 2d 141). The primary docket relating to technical standards was Docket 18894, although a total of six dockets were resolved in the general proceeding. The docket established basic performance criteria and required annual performance tests to be accomplished to demonstrate compliance with the technical rules. Because some of the new parameters required specialized and costly equipment, the economic impact of the regulations on smaller cable systems was examined in the Report and Order in Docket 19659 (47 FCC 2d 769). Ultimately a "phased-in" approach was chosen to implement the new rules over a three year period, thus lessening the impact on any system.

3. Section 76.605 of the FCC Rules and Regulations contains the specific performance parameters for cable systems. The rule section includes 12 subsections, the first 11 of which describe performance at subscriber terminals and one of which relates to cable signal leakage. The performance criteria include specifications for: (1) The frequency boundaries of cable television channels, (2) the frequency tolerance of CATV visual carriers, (3) the frequency tolerance of CATV aural carriers, (4) the minimum visual carrier levels at subscriber terminals, (5) the allowable tolerance for visual carrier level variation within 24 hours, (6) the maximum and minimum aural carrier specifications with respect to visual carrier levels, (7) the maximum allowable level of visual low frequency distortion, (8) the frequency response of each channel, (9) the allowable visual signal to system noise level and to any undesired co-channel signal, (10) the allowable level of intermodulation distortion, (11) the minimum amount of isolation between subscriber terminals, and (12) the signal leakage limitations.

4. Sections 76.605(a)(9) and 76.605(a)(10), which pertain respectively to the ratio of visual signal to any undesired co-channel television signal and intermodulation distortion, have never been implemented due to the complexity of the measurements. All of the other 10 provisions are now in place and systems must show compliance on a yearly basis in accordance with § 76.601. Most of the guidelines for measurement techniques to show compliance with § 76.605 are contained in § 76.609.

5. All of the technical standards that are now in the Rules were adopted at a time when the cable industry was little more than a series of master antenna systems for communities. The only competition to the service was over-the-air broadcasting. The present rules were therefore adopted to assist in the development of a nationwide series of CATV systems that would provide reasonable levels of service to subscribers. Federal standards also provided a guide for local governments to adopt in technical portions of franchise agreements. Since 1972, competition has increased from several sources, including video cassette recorders, satellite home earth terminals, and multipoint distribution systems. It therefore seems appropriate to reevaluate the technical requirements at this time.

#### Issues

6. There are 2 basic issues that must be resolved, as follows:



(1) Are the home subscriber quality standards still important, or has competition from other sources eliminated the need for regulations?

(2) Are the signal leakage limits still required; and, if so, are the limits contained in the Rules still appropriate?

Each issue will be considered separately.

#### Issue 1: Subscriber Quality Standard

7. As mentioned earlier, CATV systems have considerably more competition today than a decade ago. As CATV systems have expanded into metropolitan areas, the service quality has had to be maintained at least at levels equivalent to what was available free from over-the-air reception. Also, sources of cable-only programming have expanded dramatically in the past few years. Most of these cable-only services are delivered by high-quality satellite links. CATV operators, therefore, have strong marketing incentives to maintain systems that are capable of transporting products at quality levels far exceeding those specified in § 76.605 of the Rules.

8. The industry has already developed its own sets of quality specifications. Many individual CATV operators have developed "in-house" technical requirements that exceed the FCC Rules. These industry standards were developed with the goal of subscriber satisfaction, not with the goal of meeting minimum Federal regulations. In addition to individual operator performance parameters, the National Cable Television Association (NCTA), a trade organization of cable operators, has published a booklet entitled *NCTA Recommended Practices for Measurements on Cable Television Systems*. The booklet provides a guide to distribution system performance as well as head end performance. Although the FCC requirements have formed the basis of many of the NCTA performance guidelines, the guidelines in general exceed those of the FCC. Numerous other printed measurement procedures are also available from many of the cable equipment manufacturers.

9. Considering the strong incentives for CATV systems to deliver quality signals and the performance guidelines available from industry sources, there no longer appears to be a need for the quality performance standards to remain in the FCC Rules and Regulations. This proposition is amplified by the fact that the failure of a CATV system to provide quality service does not adversely impact other radio services. We therefore propose to delete all of the service quality standards contained in § 76.605, i.e., §§ 76.605(a)(1) through 76.605(a)(11). This action would

moot § 76.605(b) which exempts certain CATV systems from the quality rules. Additionally, the yearly performance requirements of § 76.601 would be deleted. Finally, except for the signal leakage specifications, the measurement procedures described in § 76.609 would be deleted. Although the specific performance parameters described above would be removed from the Rules, we are not proposing to remove the requirement that "must-carry" television broadcast signals be provided with no material degradation. We continue to believe that cable systems should provide subscribers with "must-carry" signals equivalent in quality to what is available over-the-air.

10. Deleting the above referenced rule sections does raise an issue. Since 1974, the Commission has preempted local jurisdiction in the area of technical requirements.<sup>1</sup> This has been done to prevent any adverse impact on the growth of cable television because of the imposition of overly burdensome technical requirements at the local level. The Commission continues to believe that this concern is valid and that there should be a national policy in the technical area. The Cable Act clearly allows the Commission to establish such technical requirements (see section 624(e) of the Cable Act). However, if the technical requirements are removed from the Rules, local jurisdictions will have no technical parameters that can be included in franchise agreements.<sup>2</sup> We propose, therefore, to publish the deleted rule sections in an OST (FCC Office of Science and Technology) bulletin. In accordance with the Act, we would permit local franchising authorities to include any of the guidelines in the OST bulletin in franchise agreements. Any technical requirements beyond those guidelines would be considered as inconsistent with national policy and would not be permitted. Future changes in the bulletin would be accomplished through a "public comment" process. These considerations aside, we believe that competition will provide subscribers with high quality CATV signals absent technical regulations.

11. Again, the Commission is not requiring nor recommending that local franchise authorities adopt or continue to include technical quality standards in franchise agreements. However, for those franchise authorities that choose

to include such standards, portions or all of the referenced OST bulletin could be included in franchise agreements.

#### Issue 2: Signal Leakage Limits

12. Section 76.605(a)(12) contains signal leakage limitations to be complied with by CATV systems. The limits are as follows:

| Frequencies        | Leakage limit ( $\mu\text{V/m}$ ) | Distance (meters) |
|--------------------|-----------------------------------|-------------------|
| 54 MHz and below   | 15                                | 30                |
| 54+ MHz to 216 MHz | 20                                | 3                 |
| Over 216 MHz       | 15                                | 30                |

These limits were adopted to prevent any signal leakage from CATV systems from interfering with over-the-air radio services. Consideration of the interference potential of CATV systems remains a high priority with the Commission. It is only because CATV systems operate as "closed systems" that they can coexist with the over-the-air services. The question, however, is whether the above limits should be retained as the appropriate values.

13. The Commission recently considered Docket 21006 (49 FR 45431, Nov. 16, 1984) which related to CATV Interference to the aviation radio service. The action in that matter was based on the *Final Report of the Advisory Committee on Cable Signal Leakage* (NTIS Pub. PB80-11960 5). The Advisory Committee recommended that the leakage limit between 54 and 216 MHz could be raised to 100  $\mu\text{V/m}$  at 3 meters from the cable with no adverse impact on aviation. This recommendation did not consider the impact to terrestrial radio services by such an increase. Nevertheless, the report suggests that the current limits are too strict.

14. CATV systems are much like other unlicensed users of radio frequency energy, such as computers, television receivers, intrusion alarms, and auditory training devices. Such devices are regulated under Part 15 of the FCC Rules and Regulations and most of the respective radiation limits are in excess of what is now allowed for CATV systems. The Part 15 devices may be operated in residential or industrial areas that are similarly the areas traversed by CATV systems. Both CATV systems and Part 15 devices also operate under the requirement that interference to other radio services must be eliminated, regardless of the radiation levels. It is therefore appropriate to consider why the CATV operators should be subjected to radiation limits that are far more conservative than those for Part 15

<sup>1</sup> Report and Order, Docket No. 20018, 49 FCC 2d 470 (1984).

<sup>2</sup> See H.R. Report 98-634, 98th Cong., 2d Sess. at 70, which provides that franchising authorities may not establish standards that are "inconsistent with standards established by the FCC."



devices, especially in the band from 54 to 216 MHz.

15. In reviewing parallel regulations, it must be considered that some of the Part 15 devices (primarily those that are allowed relative high radiation levels) have required duty cycles of no more than one second on the air in each 30 seconds. This duty cycle limits the potential for interference. Television receivers have quite high radiation limits, but the price paid for those limits is a "local oscillator" allocation taboo that restricts the geographical placement of UHF TV stations that are separated by seven channels. The most logical parallel rules would perhaps be those for "Class B computing devices" (home computers). Both CATV systems and computing devices produce wideband energy, operate in and near residential neighborhoods, and have similar potentials for causing interference to home entertainment equipment, so the limits could presumably be similar. The home computer rules were carefully crafted from an interference model to assure a minimum of interference caused by the devices. Additionally, we have no indication that the Class B computing devices are causing widespread interference problems at the currently permitted signal levels. For interference to occur, the affected devices generally have to be within a few feet of the computers, normally less than 30 feet. Such distances would provide adequate protection for most electronic devices from typical CATV installations.

16. Part 15 restricts Class B computing devices according to the following table:

| Frequencies       | Leakage limit (uV/m) | Distance (meters) |
|-------------------|----------------------|-------------------|
| 30 to 88 MHz      | 100                  | 3                 |
| 88 MHz to 216 MHz | 150                  | 3                 |
| Over 216 MHz      | 200                  | 3                 |

Using the existing cable limit below 54 Mhz (as that value currently exceeds the Class B limit), and using the Class B computing device table as an upper bound for cable, we propose to amend § 76.605(a)(12) to be as follows (Note that all distances have been normalized to 3 meters):

| Frequencies        | Leakage limit (uV/m) | Distance (meters) |
|--------------------|----------------------|-------------------|
| 54 Mhz and below   | 150                  | 3                 |
| 54+ Mhz to 216 Mhz | 50                   | 3                 |
| Over 216 Mhz       | 150                  | 3                 |

The frequency breaks in the table have been retained identically to the existing breaks. The band from 54 to 216 MHz is especially critical because it provides the spectrum for VHF-TV, FM

Broadcast, aviation, amateur radio operators, and VHF land mobile operations. Interference in this band could have a significant adverse impact and should, therefore, be considered separately. The limit we are proposing is half of that suggested by the Advisory Committee. As there are also aviation interests above 216 MHz, we are proposing a more conservative limit than allowed for Class B computing devices. Although the table does not fully allow the liberty of Part 15 above 54 MHz, it does relax the radiation limits considerably, subject to the condition that actual cases of interference must be promptly and effectively eliminated, regardless of the leakage levels found in accordance with § 76.613.<sup>3</sup> Accordingly, any interference complaint arising from normal usage must be resolved even if the signal leakage is below the level allowed by the table. Comments are requested on the appropriateness of the proposed values.

#### Other Considerations

17. In making the above described changes to the Rules, it appears appropriate to make certain other editorial changes. We propose to delete all of § 76.605 and 76.609. Section 76.601 would be rewritten in its entirety, to include all information relating to technical performance, required testing, and measurement procedures. The Appendix reflects these editorials.

#### Regulatory Flexibility Act—Initial Analysis

18. *I. Reason for Action.* CATV systems are currently required, on an annual basis, to show compliance with certain quality performance standards and with radiation leakage standards. In the area of quality performance, competition has increased significantly in the past decade. It therefore appears appropriate to allow the marketplace to set the quality levels rather than to have them set by the Federal Government.

<sup>3</sup> Per Memorandum Opinion and Order in RM-4040, adopted June 15, 1984 (FCC 84-283, released June 28, 1984) the Commission described the following example to help clarify the responsibilities of cable operators and amateur radio operators. If signal leakage from a CATV system merely breaks the squeal of an amateur receiver in the scanning mode, a violation does not exist unless it can be shown that signal leakage levels are in excess of the leakage limits as specified in Commission Rules. However, harmful interference clearly does exist if, for example, cable signal leakage interferes with an amateur radio repeater station or other amateur stations and their user's communications. In such an instance, the cable operator has the obligation to cooperate with the amateur radio operator and to use his resources fully to eliminate the interference regardless of the leakage level per § 76.613(b).

Because of the potential adverse impact on other radio services due to excessive cable radiation, those rules must be maintained, but in a relaxed form.

II. *The Objective.* The rules herein proposed will allow CATV operators more flexibility to match quality performance to the demands of their subscribers.

III. *Legal Basis.* The action is in furtherance of sections 1, 302, 303, 304, 307, 308, 309, and 624 of the Communications Act of 1934, as amended (47 U.S.C. 151 et seq.).

IV. *Description, potential impact on and number of small business affected.* The rules herein proposed would eliminate quality performance standards for CATV systems and the requirement for annual quality measurements. Further, the new rules would relax the signal leakage limitations. Both of these actions will result in a savings of workforce time and system operating costs for compliance with the regulations. It is nevertheless anticipated that most CATV systems will voluntarily continue with quality maintenance programs. Rule modifications as proposed could result in a savings of over 51,200 work hours.

All CATV systems will be positively affected by the actions. Reductions in the above described regulations translate directly into time and money savings. The television broadcasting industry could be negatively affected by the rule changes if the overall quality of CATV systems lessens. Of particular concern are the "must carry" television signals of over-the-air stations. The rule section requiring that these signals be carried without material degradation will be retained to assure a minimum impact on the television industry. Although a decline in CATV quality is not anticipated, the Commission will be sensitive to feedback from broadcasters and the public as a result of the proposed actions.

V. *Recording, record-keeping and other compliance requirements.* None.

VI. *Federal rules which overlap, duplicate, or conflict with this rule.* None.

VII. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective.* None.

#### Paperwork Reduction Act

19. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose new or modified requirements or burden upon the public. Implementation of any new or modified requirement or burden will be subject to



approval by the Office of Management and Budget as prescribed by the Act.

#### Ex Parte

20. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communications (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number of the proceeding to which it relates. See generally, § 1.1231 of the Commission's rules 47 CFR 1.1231.

#### Comment Period

21. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before March 29, 1985, and reply comments on or before April 15, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference

Room (Room 239) if the Federal Communications Commission, 1919 M Street, NW, Washington, D.C. 20554.

#### Actions

22. The Secretary shall cause a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 803(a) of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 50 U.S.C. *et seq.*).

23. Authority for this action is contained in sections 1, 302, 303, 304, 307, 308, 309, and 624 of the Communications Act of 1934, as amended (47 U.S.C. 51 *et seq.*).

24. For further information on this matter, contact Bernard Gorden, Mass Media Bureau, at (202) 632-9660.

(Secs. 4, 303, 48 stat., as amended, 1068, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.  
William J. Tricarico,  
Secretary.

#### Appendix

I. Title 47 CFR Part 76 of the Federal Communications Commission's Rules and Regulations is amended as follows:

#### PART 76—[AMENDED]

1. Section 76.55(a)(1) would be revised to read as follows:

##### § 76.55 Manner of Carriage.

(a) \* \* \*

(1) The signal shall be carried without material degradation in quality (within the limitations imposed by the technical state of the art).

##### § 76.601 [Removed]

2. Section 76.601 is removed in its entirety.

##### § 76.605 [Removed]

3. Section 76.605 is removed in its entirety.

##### § 76.609 [Removed]

4. Section 76.609 is removed in its entirety.

5. A new § 76.601 is added to read as follows:

##### § 76.601 Technical requirements, measurements, and tests.

(a) The operator of each cable television system shall be responsible for ensuring that each such system is designed, installed, and operated in a manner that fully complies with the provisions of this subpart. Each system

operator shall be prepared to show, on request by an authorized representative of the Commission, that the system does comply with the rules.

(b) Signal leakage from a cable television system shall not exceed the following limits:

| Frequencies         | Leakage limit (µV/m) | Distance (meters) |
|---------------------|----------------------|-------------------|
| 54 MHz and below    | 150                  | 3                 |
| 54 + MHz to 216 MHz | 50                   | 3                 |
| Over 216 MHz        | 150                  | 3                 |

(c) Measurements to determine the field strength of radio frequency energy radiated by cable television systems shall be made in accordance with standard engineering procedures. Measurements made on frequencies above 25 MHz shall include the following:

(1) A field strength meter or other type of signal level display device of adequate accuracy using a horizontal dipole antenna shall be employed.

(2) Field strength shall be expressed in terms of the rms value of synchronizing peak for each cable television channel for which radiation can be measured. For other types of signals carried on cable systems, the rms value of field strength shall be determined, using an adequate bandwidth to encompass significant components of the signals.

(3) The resonant half wave dipole antenna shall be placed 3 meters from and positioned directly below the system components and at least 3 meters above ground. Where such placement results in a separation of less than 3 meters between the center of the dipole and ground level, the dipole shall be repositioned to provide a separation of 3 meters from the system components at a height of 3 meters or more above ground.

(4) The horizontal dipole antenna shall be rotated about a vertical axis and the maximum meter reading shall be used.

(5) Measurements shall be made where other conductors are 3 or more meters away from the measuring antenna.

(d) Although not required as performance parameters by this part, the technical specifications contained in Office of Science and Technology Bulletin may be included in local franchise agreements.

[FR Doc. 85-4617 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M



## 47 CFR Part 97

(PR Docket No. 85-22)

## Frequency Coordination of Repeaters in the Amateur Radio Service; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

**SUMMARY:** This document makes certain corrections to the *Notice of Proposed Rule Making* in this proceeding concerning frequency coordination of repeaters in the Amateur Radio Service. The Proposed Rule was published in the Federal Register on February 14, 1985, 50 FR 6219.

## FOR FURTHER INFORMATION CONTACT:

John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

## SUPPLEMENTARY INFORMATION:

## Erratum

In the matter of amendment of Part 97 of the Commission's rules concerning frequency coordination of repeaters in the Amateur Radio Service (PR Docket No. 85-22).

Released: February 19, 1985.

1. In the *Notice of Proposed Rule Making*, FCC 85-40 (January 30, 1985) in this proceeding (the *Notice*), the following matters require correction.

2. The reference in paragraph eight of the *Notice* to "Central" Metropolitan Statistical Areas was intended as a reference to "Consolidated" Metropolitan Statistical Areas.

3. The references in paragraphs eight and ten of the *Notice* to MSA's were intended to refer only to Level A MSA's. Only Level A MSA's were listed in Appendix B. Comments in response to paragraph eight should be directed to CMSA's and Level A MSA's.

4. In Appendix A, the "Portland-Pawtucket-Fall River, RI-MA" CMSA is a typographical error. It should be two separate CMSA's: (1) Portland-Vancouver, OR-WA; and (2) Providence-Pawtucket-Fall River, RI-MA.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-4619 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF TRANSPORTATION

## National Highway Traffic Safety Administration

## 49 CFR Part 571

(Docket No. 85-01; Notice 1)

## Evaluation Report on Federal Motor Vehicle Safety Standard No. 205 Glazing Materials and Federal Motor Vehicle Safety Standard No. 212 Windshield Mounting; Request for Public Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for Comments.

**SUMMARY:** This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standards No. 205, *Glazing Materials* and No. 212, *Windshield Mounting*. This staff report evaluates the safety effectiveness and costs of High Penetration Resistant windshields and adhesive bonding of the windshield in passenger cars. The report was developed in response to Executive Order 12291, which provides for Government-wide review of existing major Federal regulations. The Agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

**DATE:** Comments must be received no later than May 28, 1985.

**ADDRESSES:** Interested persons may obtain a copy of the report free of charge by contacting Mr. Richard Jordan, Office of Management Services, National Highway Traffic Safety Administration, Room 6115, 400 Seventh Street, SW., Washington, DC, 20590 (202-426-0874). All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C., 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.]

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank G. Ephraim, Director, Office of Program Evaluation, Plans and Programs, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW., Washington, D.C., 20590 (202-426-1574).

**SUPPLEMENTARY INFORMATION:** Safety Standard No. 205 (49 CFR 571.205) specifies requirements for all glazing materials used in windshields, windows and interior partitions of motor vehicles. The most notable change in automotive glazing during the period 1960-84 was the development and implementation of the High Penetration Resistant (HPR)

windshield, which was designed to crumple and deform at speeds where earlier windshields would have been penetrated by head impacts. Its goal was to reduce facial lacerations, fractures and other head injuries associated with penetrated windshields. Safety Standard No. 212 (49 CFR 571.212) requires windshield mountings to be anchored in place and retain a specified percentage of the windshield periphery in a crash test. Its purpose is to keep vehicle occupants within the confines of the passenger compartment during a crash. The most notable changes in windshield mounting during the period 1960-80 were the shift from a rubber gasket mounting to adhesive bonding in domestic vehicles and the installation of clips within the rubber gaskets of Volkswagens.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of windshield glazing and installation methods for passenger cars to determine the effectiveness of the technology selected by the manufacturers in preventing fatalities and injuries and to determine the costs of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation, however, is limited to a study of HPR windshields, adhesive bonding of the windshield in domestic cars, and the clips used to install windshields in Volkswagens. It does not deal with other aspects of Standards 205 and 212. It is also limited to passenger cars.

The principal findings and conclusions of the report are the following:

- HPR glazing doubled the impact velocity needed for the occupant's head to penetrate the windshield, preventing 39,000 serious lacerations and 8,000 facial fractures per year.

- HPR glazing did not have negative side effects such as an increase in concussions.

- Adhesive bonding in domestic cars and the clips used in Volkswagens halved windshield bond separation and occupant ejection through the windshield portal, saving 112 lives per year.

- Adhesive bonding and Volkswagen's clips did not increase the injury risk of persons who are not ejected.

- HPR glazing added \$6 (in 1982 dollars) to the lifetime cost of owning



and operating a car, but adhesive bonding saved \$15 per car.

The report was developed from statistical analyses of National Crash Severity Study, Multidisciplinary Accident Investigation, New York State, Texas and Fatal Accident Reporting System data, a review of previous laboratory studies and statistical accident analyses of windshields and manufacturing cost analyses for production windshields.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments on the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket

supervisor will return the postcard by mail.

(Secs. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on: February 15, 1985.

Adele Spielberger,

Acting Associate Administrator for Plans and Programs.

[FR Doc. 85-5638 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-50-M



## Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

### ADVISORY COUNCIL ON HISTORIC PRESERVATION

#### Programmatic Memorandum of Agreement Regarding the Management of Historic Properties at Fort Benning, Georgia and Alabama

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement (PMOA) pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with various units of the Department of the Army, the Georgia State Historic Preservation Officer, and the Alabama State Historic Preservation Officer providing for the management of historic properties within the boundaries of Fort Benning. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and archaeological properties will be identified, evaluated and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470f). Copies of the proposed PMOA are available from the Council.

*Comments due:* March 28, 1985.

**ADDRESS:** Executive Director, Advisory Council on Historic Preservation, Old Post Office Building, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, D.C. 20004, Attn: Ronald D. Anzalone.

Robert R. Garvey, Jr.,  
Executive Director.

Dated: February 20, 1985.

[FR Doc. 85-4657 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-10-M

#### Programmatic Memorandum of Agreement Regarding the Management of Historic Properties on Lands Owned, Managed, or Controlled by the U.S. Army, White Sands Missile Range, NM

**AGENCY:** Advisory Council on Historic Preservation.

**ACTION:** Notice.

**SUMMARY:** The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), with the White Sands Missile Range, Department of the Army, and the New Mexico State Historic Preservation Officer providing for the management of historic properties found on lands owned, managed or controlled by the Department of the Army at White Sands Missile Range, New Mexico. The proposed Programmatic Memorandum of Agreement will establish mechanisms by which historic and cultural properties will be identified, evaluated and protected in order to meet the requirements of section 106 of the National Historic Preservation Act (16 U.S.C. 470).

*Comments due:* March 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Additional information regarding this Programmatic Memorandum of Agreement is available from the Executive Director, Advisory Council on Historic Preservation, Western Division of Project Review, 730 Simms Street, Room 450, Golden, Colorado 80401, telephone (303) 236-2882.

Dated: February 21, 1985.

Robert R. Garvey, Jr.,  
Executive Director.

[FR Doc. 85-4658 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-10-M

### DEPARTMENT OF AGRICULTURE

#### Forest Service

#### Little Frog Mountain and Big Frog Extension Wilderness Study Areas; Hearing

Notice is hereby given that a public hearing will be held, beginning at 7:00 p.m., April 1, 1985, in the conference room of the Forest Supervisor's Office,

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Tuesday, February 26, 1985

2800 North Ocoee, Cleveland, Tennessee, on a proposal for the management of the Little Frog Mountain and Big Frog Extension Wilderness Study Areas. These areas consist of approximately 7,800 acres within the Cherokee National Forest in Polk County, Tennessee.

Analyses being used in these land allocation considerations are reported in the Draft Environmental Impact Statement for the Cherokee National Forest Land and Resource Management Plan and its associated maps. Information about the proposal may be obtained from the Forest Supervisor, Cherokee National Forest, Box 2010, Cleveland, Tennessee 37311.

Individuals and organizations may express their views by appearing at this hearing or may submit written comments for inclusion in the official record to the Forest Supervisor. To be included in the official record, written comments must be received by May 1, 1985.

Comments and testimony must be limited to the consideration of the management of Little Frog Mountain and Big Frog Extension Wilderness Study Areas. Comments on the Draft Forest Land and Resource Management Plan for the Cherokee National Forest and its Environmental Impact Statement are being solicited as part of a separate public involvement effort. For more information about this, contact Forest Supervisor, USDA, Forest Service, Box 2010, Cleveland, Tennessee 37311.

Dated: February 19, 1985.

John E. Alcock,

Regional Forester.

[FR Doc. 85-4577 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-11-M

### Packers and Stockyards Administration

#### Depositing of Stockyards

It has been ascertained, and notice is hereby given, that the livestock markets named herein, originally posted on the respective dates specified below as being subject to the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), no longer come within the definition of a stockyard under said Act and are, therefore, no longer subject to the provisions of the Act.



| Facility No., name, and location of stockyard                          | Date of posting |
|------------------------------------------------------------------------|-----------------|
| GA-127 Dublin Livestock Company, Dublin, Georgia.                      | May 26, 1959.   |
| IA-143 Eddyville, Sale Company, Eddyville, Iowa.                       | May 23, 1959.   |
| IA-145 Mid States Livestock, Inc., Eldora, Iowa.                       | Mar. 11, 1957.  |
| IA-196 Irwin Commission Company, Irwin, Iowa.                          | May 24, 1959.   |
| IA-197 Osceola Sale Company, Inc., Osceola, Iowa.                      | June 4, 1959.   |
| IA-225 Traer Livestock Market, Traer, Iowa.                            | Mar. 11, 1959.  |
| IA-248 Harlan Livestock Auction Co., Harlan, Iowa.                     | Apr. 11, 1974.  |
| MIN-166 Perham Livestock Auction Market, Inc., Perham, Minnesota.      | May 9, 1975.    |
| NY-159 Waldkill Livestock Market, Walden, New York.                    | July 9, 1980.   |
| NY-163 Jack Woods Livestock and Auction Service, Cincinnati, New York. | Dec. 3, 1982.   |

Notice or other public procedure has not preceded promulgation of the foregoing rule. There is no legal justification for not promptly depositing a stockyard which is no longer within the definition of that term contained in the Act.

The foregoing is in the nature of a change relieving a restriction and may be made effective in less than 30 days after publication in the Federal Register. This notice shall become effective upon publication in the Federal Register.

(42 Stat. 159, as amended and supplemented; 7 U.S.C. 181 *et seq.*)

Done at Washington, D.C., this 19th day of February, 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85-4614 Filed 2-25-85; 8:45 am]

BILLING CODE 3210-02-KD

### Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 202), and should be made subject to the provisions of the Act.

|                                                                    |
|--------------------------------------------------------------------|
| GA-193 South Central Livestock, Inc., Fitzgerald, Georgia          |
| MO-261 MO Cow Co Livestock Exchange, Lancaster, Missouri           |
| NC-155 Turnersburg Horse Auction, Harmony, North Carolina          |
| ND-132 Litchville Feeder Pig, Litchville, North Dakota             |
| OH-149 Hoppel Brothers Auction Pavilion, Inc., West Point, Ohio    |
| SC-137 Chester Livestock Market, Inc., Chester, South Carolina     |
| VT-110 Silver Ridge Sale Barn, Highgate, Vermont                   |
| WY-114 Central Wyoming Livestock Exchange, Inc., Glenrock, Wyoming |

Notice is hereby given that pursuant to authority under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*), it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of the Act as provided in section 302 thereof.

Any person who wishes to submit written data, views, or arguments concerning the proposed designation, may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, United States Department of Agriculture, Washington, DC 20250, by March 13, 1985.

All written submissions made pursuant to this notice shall be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC, this 19th day of February 1985.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 85-4613 Filed 2-25-85; 8:45 am]

BILLING CODE 3410-02-M

### DEPARTMENT OF COMMERCE

#### International Trade Administration

[A-122-501]

#### Rock Salt From Canada; Initiation of Antidumping Duty Investigation

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

**SUMMARY:** On the basis of a petition filed in proper form which the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether rock salt from Canada is being, or is likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 14, 1985, and we will make ours on or before July 8, 1985.

**EFFECTIVE DATE:** February 26, 1985.

**FOR FURTHER INFORMATION CONTACT:** Mary S. Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 377-5486.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On January 28, 1985, we received a petition in proper form filed by International Salt Company. In compliance with the filing requirements of § 355.36 of the Commerce Regulations (19 CFR 355.36), the petition alleged that imports of the subject merchandise from Canada are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

The petitioner based the United States prices on actual sales of rock salt to U.S. purchasers, less estimated freight, wharfage and warehouse costs.

The petitioner based foreign market value on sales prices of the merchandise in Canada less estimated freight, wharfage and warehouse costs.

By comparing the values calculated by the foregoing methods, the petitioner alleged dumping margins between 16 and 55 percent.

##### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on rock salt and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether rock salt from Canada is being, or is likely to be, sold in the United States at less than fair value. If our investigation proceeds normally we will make our preliminary determination by July 8, 1985.

##### Scope of Investigation

The product under investigation are rock salt, in bulk and packaged form, currently classified in the *Tariff Schedules of the United States, Annotated* (TSUSA), under items 420.9400 and 420.9600, respectively.

##### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used



to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

#### Preliminary Determination by ITC

The ITC will determine by March 14, 1985, whether there is a reasonable indication that imports of rock salt from Canada are causing material injury, or threaten material injury, to a United States industry. If its determination is negative the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Alan F. Holmer,

Deputy Assistant Secretary for Import Administration.

February 19, 1985.

[FR Doc. 85-4670 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-DS-M

#### Transportation and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Transportation and Related Test Equipment Technical Advisory Committee will be held March 13, 1985, at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue NW., Washington, D.C.

The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to transportation and related equipment or technology.

#### Agenda:

1. Opening Remarks—Deputy Assistant Secretary Walter J. Olson.
2. Overview of Export Administration—Director, John K. Boidock.
3. Election of chairman.
4. Presentation of papers or comments by the public.
5. Foreign Availability Program—Toli Wellhokzy.
6. Determination of planned work program—Monty Baltas.
  - (a) Requirement for annual plan.
  - (b) Requirement for annual report.
  - (c) TAC Chairman's meeting—June 12, 1985.

#### Executive Session:

7. Discussions of matters properly

classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 19, 1985, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(3)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: (202) 377-4217. For further information or copies of the minutes contact Margaret A. Cornejo (202) 377-2583.

Dated: February 21, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85-4669 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-DS-M

#### Minority Business Development Agency

#### Financial Assistance Application Announcement, Virginia

AGENCY: Minority Business Development Agency, Commerce.  
ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds beginning July 1, 1985. The cost of performance for the first 12 months is estimated at \$187,000. The MBDC will

operate in the Richmond, Virginia Metropolitan Statistical Area (MSA). The first year's cost for the MBDC will consist of \$158,950 in Federal funds and a minimum of \$28,000 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The funding instrument for the MBDC will be a Cooperative Agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with continual reviews culminating in annual evaluations to determine if funding for the project should continue. Recommendations to continue funding will be at the discretion of MBDA based on such factors as an MBDA's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is March 15, 1985. Applications must be postmarked on or before March 15, 1985.

ADDRESS: Washington Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-8280.

FOR FURTHER INFORMATION CONTACT: Stanley W. Tate, Regional Director, Washington Regional Office.



**SUPPLEMENTARY INFORMATION:**

Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11,800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: February 5, 1985.

Stanley W. Tate,

Regional Director, Washington Regional Office.

[FR Doc. 85-4644 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-21-M

### National Technical Information Service

#### Intent To Grant Partial Exclusive Patent Licenses to Pest-Select and Griffin Corporation

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Pest-Select of New Canaan, Connecticut and Griffin Corporation of Valdosta, Georgia partial exclusive licenses to practice the inventions embodied in U.S. Patent 4,474,991, "Synthetic Pheromone 10-Methyl-2-Tridecanone and Its Use in Controlling the Southern Corn Rootworms and Related Diabroticites," U.S. Patent Application 408,569, "Synthetic Pheromone 8-Methyl-2-decanol Propanoate and Its Use in Controlling Corn Rootworms," and the divisional applications thereof. The patent rights in these inventions have been assigned to the United States of America, as represented by the Secretary of Commerce.

The proposed exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 41 CFR 101-4.1. The proposed licenses may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the proposed licenses would not serve the public interest.

Inquiries comments and other materials relating to the proposed licenses, must be submitted to the Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-4642 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-21-M

### National Oceanic and Atmospheric Administration

#### Notice of Receipt of Permit Applications

This document publishes for public review a summary of applications received by the Secretary of State requesting permits for foreign vessels to fish in the fishery conservation zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 *et seq.*) Send comments on applications to:

Fees, Permits and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235

or, send comments to the Fishery Management Council(s) which review the application(s), as specified below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building Room 2115, 300 South New Street, Dover, DE 19901, 302/674-2331

David H.G. Gould, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-1366

Omar Munoz-Roure, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00818, 809/753-6910

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815

Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, OR 97201, 503/221-6352

Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 W. Fourth Avenue, Suite 2D, Anchorage, AK 99510, 907/271-4060

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 184 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368

For further information contact John D. Kelly (Fees, Permits, and Regulations Division, 202-634-7432).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of all applications for such permits summarizing the contents of the applications in the Federal Register. The National Marine Fisheries Service,

under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues the notice on behalf of the Secretary of State.

Individual vessel applications for fishing in 1985 have been received between January 19, 1985 and February 6, 1985 from the Government(s), shown below.

Dated: February 21, 1985.

Roland Finch,

Director, Office of Fisheries Management, National Marine Fisheries Service.

Fishery codes and designation of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

| Code | Fishery                                                | Regional Fishery Management Councils                                                 |
|------|--------------------------------------------------------|--------------------------------------------------------------------------------------|
| ABS  | Atlantic Billfishes and Sharks                         | New England, Mid Atlantic, South Atlantic, Gulf of Mexico, Caribbean, North Pacific. |
| BSA  | Bering Sea and Aleutian Islands Groundfish             | North Pacific.                                                                       |
| GOA  | Gulf of Alaska                                         | New England, Mid Atlantic.                                                           |
| NWA  | Northwest Atlantic Ocean                               | Western Pacific.                                                                     |
| SMT  | Seamount Groundfish                                    | North Pacific.                                                                       |
| SNA  | Snails (Bering Sea)                                    | Pacific.                                                                             |
| WOC  | Pacific Groundfish (Washington, Oregon and California) | Western Pacific.                                                                     |
| PBS  | Pacific Billfishes and Sharks                          |                                                                                      |

Activity codes which specify categories of fishing operations applied for are as follows:

| Activity code | Fishing operations                          |
|---------------|---------------------------------------------|
| 1             | Catching, processing and other support.     |
| 2             | Processing and other support only.          |
| 3             | Other support only.                         |
| 4             | "Joint venture" in support of U.S. vessels. |

| Nation vessel name, vessel type         | Application No. | Fishery | Activity |
|-----------------------------------------|-----------------|---------|----------|
| The Government of the Republic of Korea |                 |         |          |
| No. 77 Oryong, Longliner                | KS-85-3036      | PBS     | 1        |
| No. 71 Oryong, Longliner                | KS-85-3007      | PBS     | 1        |
| No. 33 Oryong, Longliner                | KS-85-3033      | PBS     | 1        |
| No. 32 Oryong, Longliner                | KS-85-3043      | PBS     | 1        |
| No. 35 Oryong, Longliner                | KS-85-3044      | PBS     | 1        |
| No. 62 Oryong, Longliner                | KS-85-3045      | PBS     | 1        |
| No. 63 Oryong, Longliner                | KS-85-3046      | PBS     | 1        |
| No. 65 Oryong, Longliner                | KS-85-3047      | PBS     | 1        |
| No. 85 Oryong, Longliner                | KS-85-3048      | PBS     | 1        |
| No. 91 Oryong, Longliner                | KS-85-3049      | PBS     | 1        |
| No. 93 Oryong, Longliner                | KS-85-3050      | PBS     | 1        |
| No. 503 Haeng Bok, Longliner            | KS-85-3051      | PBS     | 1        |



| Nation vessel<br>name, vessel type                    | Application No. | Fishery | Activity |
|-------------------------------------------------------|-----------------|---------|----------|
| No. 511 Heang<br>Bok, Longliner.                      | KS-85-3052      | PBS     | 1        |
| No. 519 Heang<br>Bok, Longliner.                      | KS-85-3053      | PBS     | 1        |
| No. 57 Oyang,<br>Longliner.                           | KS-85-3054      | PBS     | 1        |
| No. 106 Oyang,<br>Longliner.                          | KS-85-3055      | PBS     | 1        |
| Clover No. 102,<br>Longliner.                         | KS-85-3056      | PBS     | 1        |
| Clover No. 103,<br>Longliner.                         | KS-85-3057      | PBS     | 1        |
| Clover No. 105,<br>Longliner.                         | KS-85-3058      | PBS     | 1        |
| Government of the Union of Soviet Socialist Republics |                 |         |          |
| Argonit, Large<br>Stem Trawler.                       | UR-85-0224      | WOC     | 1(4)     |
| Babykino, Large<br>Stem Trawler.                      | UR-85-0765      | WOC     | 1(4)     |
| Izmirudny, Large<br>Stem Trawler.                     | UR-85-0747      | WOC     | 1(4)     |
| Karagach, Large<br>Stem Trawler.                      | UR-85-0026      | WOC     | 1(4)     |
| Khustalnyi, Large<br>Stem Trawler.                    | UR-85-0710      | WOC     | 1(4)     |
| Lesogorsk, Large<br>Stem Trawler.                     | UR-85-0230      | WOC     | 1(4)     |
| Mys Soryavina,<br>Large Stem<br>Trawler.              | UR-85-0227      | WOC     | 1(4)     |
| Mys Zolotoy,<br>Large Stem<br>Trawler.                | UR-85-0775      | WOC     | 1(4)     |
| Mramornyi, Large<br>Stem Trawler.                     | UR-85-0713      | WOC     | 1(4)     |
| Skalskiy, Large<br>Stem Trawler.                      | UR-85-0052      | WOC     | 1(4)     |
| Ursniya, Large<br>Stem Trawler.                       | UR-85-0774      | WOC     | 1(4)     |

# COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

## Request for Public Comment on Bilateral Textile Consultations With Bangladesh on Category 334 (Men's and Boys' Other Coats)

February 21, 1985.

On January 29, 1985, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of men's and boys' other coats in Category 334, produced or manufactured in Bangladesh.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish a limit for the entry and withdrawal from warehouse for consumption of men's and boys other coats in Category 334, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on January 29, 1985 and extends through January 28, 1986 at a level of 31,068 dozen.

A summary market statement follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 334, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a

waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Ronald I. Levin,

Acting Chairman, Committee for the  
Implementation of Textile Agreements.

## Bangladesh—Market Statement

Category 334—Men's and Boy's Cotton Coats and Jackets

January 1985.

U.S. Imports of Category 334 from Bangladesh increased from 13,840 dozen in 1982 to 16,425 dozen in 1983. Imports during January-November 1984, at \$3,442 dozen, were 165 percent higher than in the first eleven months of 1983. Year ending November 1984 imports reached 37,246 dozen. Bangladesh is the largest uncontrolled supplier of these coats and these garments are being imported at landed duty-paid values well below U.S. producer prices for comparable garments. These men's and boys' cotton coats from Bangladesh are entering a market which is already being disrupted by imports. The import to production ratio for 1974 was 12.4 percent. It quadrupled to 49.4 percent by 1979 and increased nearly three and a half times by 1983 to 171.9 percent.

[FR Doc. 85-4651 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-DR-M

## Poland

### Joint Venture

The Government of the Polish People's Republic (PPR) submitted an amendment to their initial application for joint venture activities in the Washington-Oregon-California (WOC) management area. The PPR has increased its request by an additional 10,000 mt for a total of 20,000 mt of Pacific whiting. Preliminary indications show that Quest Inc., Coos Bay, Oregon may be the U.S. partner. It is anticipated that the joint venture will operate from May to October 1985.

## Soviet Union

### Joint Venture

The Government of the Union of Soviet Socialist Republics has submitted an application for 20,000 mt of joint venture purchases in the WOC management area with the Marine Resources Company, Inc., 192 Nickerson, Suite 307, Seattle, Washington, 98109. The joint venture is anticipated to operate from June to September 1985.

[FR Doc. 85-4675 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-22-M

## Announcing Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines Effective on January 1, 1985

### Correction

February 21, 1985.

On December 27, 1984 a notice was published in the Federal Register (49 FR 50231) announcing the restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1985. The twelve-month restraint limit for man-made fiber work gloves in Category 631pt. (only TSUSA numbers 704.3215, 704.8525, and 704.9000) in the letter to the Commissioner of Customs which followed that notice should have been 392,000 dozen pairs, instead of 404,000 dozen pairs.

Ronald I. Levin,

Acting Chairman, Committee for the  
Implementation of Textile Agreements.

[FR Doc. 85-4652 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-DR-M



## CONSUMER PRODUCT SAFETY COMMISSION

### Interagency Committee on Cigarette and Little Cigar Fire Safety; Technical Study Group Meeting

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Interagency Committee on Cigarette and Little Cigar Fire Safety, notice of change in meeting location.

**SUMMARY:** The place for the meeting of the Technical Study Group on Cigarette and Little Cigar Fire Safety on March 4-5, 1985, has been changed to the VIP Conference Room, Philip Morris Manufacturing Center, Exit 8 (Bells Road) Interstate 95, Richmond, Virginia. All other details of this meeting announced in the *Federal Register* of February 19, 1985 (50 FR 6980) remain unchanged.

**FOR FURTHER INFORMATION CONTACT:** Colin B. Church, Office of Program Management, Consumer Product Safety Commission, Washington, D.C., 20207; telephone: (301) 492-6554.

Dated: February 21, 1985.

Colin B. Church,

*Federal Employee Designated by the Interagency Committee on Cigarette and Little Cigar Fire Safety.*

[FR Doc. 85-4712 Filed 2-25-85; 8:45 am]

BILLING CODE 6355-01-M

### Notification of Proposed Collection of Information Survey of Households With Ground Fault Circuit Interrupters

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval through December 31, 1985, of a proposed collection of information in the form of a survey of households having ground fault circuit interrupters.

Since the early 1970's, a device has been available to prevent accidental electrocutions associated with appliances used in the household. This device, called a ground fault circuit interrupter, automatically stops the flow of any electric current traveling through an unintended path, such as a person's body, to the ground. The action of this device to stop the flow of electrical current is called "tripping."

Early models of ground fault circuit interrupters installed in residential

buildings would sometimes "trip" because of extraneous influences, such as excessive humidity, or electrical "noise" from other appliances being operated in the household. In response to complaints about excessive tripping, manufacturers refined the device to reduce the frequency of inappropriate tripping.

The Commission proposes to conduct a survey of households having ground fault circuit interrupters to obtain information about consumers' experience with and perception of these devices. Specifically, the Commission proposes to seek information about the frequency of tripping, the perceived reasons for tripping, and actions taken by residents in response to tripping of ground fault circuit interrupters.

This information will be used by the Commission to determine what action, if any, should be taken to promote wider use of ground fault circuit interrupters.

**Additional Details About the Proposed Collection of Information—**

**Agency Address:** Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C. 20207.

**Title of Information Collection:** Consumer Survey of Homes with Ground Fault Circuit Interrupters (GFCI's).

**Type of Request:** New plan.

**Frequency of Collection:** One screening questionnaire; one telephone interview.

**General Description of Respondents:** Persons who are the original residents of homes, including apartments and mobile homes, with installed ground fault circuit interrupters.

**Estimated Number of Respondents:** Screening questionnaire—22,000; telephone survey—625.

**Total Estimated Number of Hours for all Respondents:** 198.

**Comments:** Comments on this request for approval of a proposed collection of information should be addressed to Andy Velez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395-7313. Copies of the request for approval of the proposed collection of information are available from Francine Shacter, Office of Budget, Program Planning, and Evaluation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: February 20, 1985.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 85-4574 Filed 2-25-85; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Corps of Engineers, Department of the Army

#### Intent To Prepare Draft Supplemental Environmental Impact Statement for Proposed Navigation Study; Kill Van Kull and Newark Bay Channels, New York and New Jersey.

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Notice of Intent to Prepare a Draft Supplemental Environmental Impact Statement.

**SUMMARY:** 1. Description of Proposed Action—Deepening existing Federal navigation channels from the upper harbor to and include Port Elizabeth and Port Newark channels to a depth of 45 feet. Widening will be done in selected areas to permit safer turns and to eliminate sharp bends. The dredged material (approx. 30 million cubic yards) will be disposed at the EPA designated disposal site in the New York Bight. Alternative disposal methods will be considered if available.

2. Need for Statement—The New York District agreed during preparation of the final statement that additional information would be developed for this action.

The supplemental statement will discuss:

- (a) An updated review of disposal alternatives;
- (b) An undated review of sediment quality for disposal;
- (c) A detailed look at hydraulic impacts resulting from the proposed action;
- (d) Additional aquatic studies to resolve the need for mitigation; and
- (e) 404(b)(1) evaluations to discuss impact of barge overflow during dredging operations.

3. Scoping Meeting will not be held.

4. Estimate date of statement availability January 1986.

**ADDRESS:** US Army Engineer District, New York, 26 Federal Plaza, New York, N.Y. 10278-0090.

**FOR FURTHER INFORMATION CONTACT:** Project Manager: Andy Lau, ATTN: NANPL-FN. Tel No. 212-264-9077



EIS Coordinator: Joe Debler, ATTN:  
NANPL-E. Tel. No. 212-264-4863

Dated: February 14, 1985.

Samuel P. Tosi, P.E.,

Chief, Planning Division.

[FR Doc. 85-4649 Filed 2-25-85; 8:45 am]

BILLING CODE 3710-06-M

## Department of the Navy

### Public Information Collection Requirement Submitted to OMB for Review

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of Submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; (8) The point of contact from whom a copy of the information proposal may be obtained.

#### Extension

Unit Price Analysis and Unit Price  
Analysis Summary, NAVSEA 4280/2,  
NAVSEA 4280/2A

Information is required to provide cost data for NAVSEA estimators to prepare for U.S. Navy Budget Estimates (used by Navy for Congressional Appropriations and Defense Planning), to prepare Prebid Estimates to determine reasonableness of Contract Awards, to determine Cost Effectiveness Alternate Designs or procurement strategies.

Businesses or other for profit  
Responses 180

Burden hours 1,400

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson-Davis Highway, Suite 1204, Arlington, VA 22202-4302, telephone (202) 746-0933.

**SUPPLEMENTARY INFORMATION:** A copy of the information collection proposal may be obtained from Mr. James L. Cotton,

Naval Sea Systems Command, National Center #3, Washington, D.C. 20362-5101, telephone (202) 692-0720.

Dated: February 21, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer,  
Department of Defense.

[FR Doc. 85-4599 Filed 2-25-85; 8:45 am]

BILLING CODE 3510-01-M

### Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Naval Research Advisory Committee Working Group on Amphibious Operations will meet on 13 March 1985, at HRA, Inc., 1701 North Fort Myer Drive, Arlington, Virginia. The first session will commence at 9:30 A.M. and terminate at 12:00 P.M. The second and final session will commence at 1:00 P.M. and terminate at 5:00 P.M. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to review material and briefings presented to the Working Group during previous meetings and prepare a final draft report. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are in fact properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will concern matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contract:

Commander M.B. Kelley, U.S. Navy,  
Office of Naval Research (Code 100N),  
800 North Quincy Street, Arlington,  
VA 22217-5000, Telephone number  
(202) 696-4870.

Dated: February 25, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve,  
Federal Register Liaison Officer.

[FR Doc. 85-4829 Filed 2-25-85; 8:40 am]

BILLING CODE 3510-AE-M

## DEPARTMENT OF EDUCATION

### Office of Postsecondary Education

**Strengthening and Endowment Grant Programs; Application Notice for Planning Grants, Renewable Development Grants, and Endowment Grants in Fiscal Year 1985; Extension of Closing Date for Certain Eligible Institutions of Higher Education**

#### Correction

In the issue of Tuesday, February 19, 1985, in the document beginning on page 6981, make the following correction: On page 6982, in the first column, in the file line, "FR Doc. 85-4161" should read "FR Doc. 85-4160a".

BILLING CODE 1505-01-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[Docket No. ERA-FC-84-026; OFP Case No. 65036-9261-20-24]

#### Petition Exemption; Chino, CA

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Notice of extension of decision period on petition for exemption by OLS Energy-Chino, for a proposed facility in Chino, California.

**SUMMARY:** The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby extends by ninety (90) days to May 5, 1985, the Decision Period within which to either grant or deny the request for a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") filed by OLS Energy-Chino for its proposed electric powerplant in Chino, California.

Section 501.68(a)(2) of 10 CFR Part 501—Administrative Procedures and Sanctions, Subpart F—allows for the extension of the decision period on an exemption petition to a date certain by publishing such notice in the *Federal Register* and stating the reasons for such extension.

This extension by ERA of the decision to grant or deny the petition is necessary because of uncertainties which have arisen regarding the control technology which will be required for the electric powerplant in order to meet California emission standards. OLS Energy-Chino will attempt to resolve these issues during the extension period.



Issued in Washington, D.C. on February 15, 1985.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-4701 Filed 2-25-85; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Forms Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of submission of request for clearance to the Office of Management and Budget.

**SUMMARY:** The Department of Energy (DOE) has submitted the following collections to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements

contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by DOE.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

**DATE:** Last Notice published Monday, January 30, 1985 [50 FR 4257].

### FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Data Collection and Services Division (DCSD), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000

Independence Ave., SW., Washington, DC 20585, (202) 252-2308

Vartkes Broussalian, Department of Energy, Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7313

**SUPPLEMENTARY INFORMATION:** Copies of proposed collections and supporting documents may be obtained from Mr. Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., February 21, 1985.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

### DOE FORMS UNDER REVIEW BY OMB

| Form No. | Form title                                                        | Type of request | Response frequency | Response obligation | Respondent description                                                      | Estimated number of respondent | Annual respondent burden | Abstract                                                                                                                                                                                                                                                                   |
|----------|-------------------------------------------------------------------|-----------------|--------------------|---------------------|-----------------------------------------------------------------------------|--------------------------------|--------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1)      | (2)                                                               | (3)             | (4)                | (5)                 | (6)                                                                         | (7)                            | (8)                      | (9)                                                                                                                                                                                                                                                                        |
| EIA-747  | Petroleum Facility Operator Identification Survey.                | Reinstatement.  | One-time           | Mandatory           | Terminal, Pipeline, Tanker and Barge, Oil Well, Refinery and NGL Operators. | 3,000                          | 576                      | EIA-747 is one-time survey designed to obtain information on operators of petroleum supply facilities. Data will be used to determine whether such operators are eligible respondents to EIA monthly data surveys.                                                         |
| FERC-547 | Gas Pipeline Rates: Refund Obligations.                           | Extension       | Event Oriented     | Mandatory           | Natural Gas Pipelines, Producers and other first sellers of natural gas.    | 275                            | 63,315                   | The filing of refund reports is necessary to ensure compliance with the Natural Gas Act and the Natural Gas Policy Act, and the correct refunding of amounts which were overcharged.                                                                                       |
| FERC-576 | Report by Certain Natural Gas Companies on Service Interruptions. | Extension       | On Occasion        | Mandatory           | Natural Gas Pipelines.                                                      | 16                             | 48                       | The information collected is required to give the Commission sufficient data to ensure continuity of pipeline service. Natural Gas Pipeline companies are required to submit reports concerning emergencies affecting their service or facilities. Data are not published. |

[FR Doc. 85-4700 Filed 2-25-85; 8:45 am]

BILLING CODE 6450-01-M

## Office of Energy Research

### Energy Research Advisory Board, International R&D Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: International R&D Panel of the Energy Research Advisory Board (ERAB).

Date & time: March 19-20, 1985-9:00 a.m.-5:30 p.m.

Place: U.S. Department of Energy, 1000 Independence Avenue, SW, Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, U.S. Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 252-5444.

Purpose of the parent board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department. The purpose of the Panel is to report to the parent Board on international energy R&D and specifically on international

collaboration on large scale scientific and technology programs involving long time horizons for energy research and development.

### Tentative Agenda

- Review of Staff Support Papers;
- Discussion of Draft Outline of Report;
- Discussion of Interim Letter Report;
- Future Meeting Schedule; and
- Public Comment (10 minute rule).

### Public Participation

The meeting is open to the public. Written statements may be filed with



the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

#### Transcripts

Available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on February 15, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85-4698 Filed 2-26-85; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Docket No. RP84-107-001]

#### Arkansas Louisiana Gas Co., A Division of Arkla, Inc.; Motion To Place Rate Increase in Effect

February 21, 1985.

Take notice that on February 1, 1985, Arkansas Louisiana Gas Company, a division of Arkla, Inc. (Arkla) tendered for filing a Motion To Place Rate Increase In Effect (Motion). According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until February 7, 1985. Arkla's Motion requests that the settlement rate, as approved by Commission letter order issued January 29, 1985 in Docket No. RP84-107-000, and shown on the attached tariff sheets identified as 38th Revised Sheet No. 4 to Arkla's FERC Gas Tariff, First Revised Volume No. 1 and 37th Revised Sheet No. 185 to Arkla's FERC Gas Tariff, Original Volume No. 3, become effective as of February 1, 1985.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4678 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7647-001]

#### Brookport Associates; Surrender of Preliminary Permit

February 21, 1985.

Take notice that Brookport Associates, Permittee for the Brookport Project No. 7647, has requested that the preliminary permit be terminated. The preliminary permit for Project No. 7647 was issued on April 19, 1984, and would have expired on March 31, 1986. The project would have been located on the Ohio River, in Massac County, Illinois.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7647 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4679 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7351-001]

#### Hugh A. Carter, Jr.; Surrender of Preliminary Permit

February 21, 1985.

Take notice that Hugh A. Carter, Jr., Permittee for the proposed Ledbetter Creek Power Project No. 7351, requested by letter dated January 28, 1985, that his preliminary permit be terminated. The preliminary permit was issued on July 24, 1984, and would have expired on December 31, 1985. The project would have been located on the Ledbetter Creek in Swain County, North Carolina.

The Permittee filed the request on January 30, 1985, and the preliminary permit for Project No. 7351 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4683 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8229-000]

#### Cook Electric, Inc.; Surrender of Preliminary Permit

February 21, 1985.

Take notice that Cook Electric, Inc., Permittee for the Freeman Creek Project No. 8229, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8229 was issued on September 21, 1984, and would have expired on February 28, 1986. The project would have been located on Freeman Creek in Lemhi County, Idaho.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 8229 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4680 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP83-138-002]

#### Distrigas of Massachusetts Corp.; Filing of Revised Tariff Sheets and Refund Report

February 21, 1985.

Take notice that on February 11, 1985, Distrigas of Massachusetts Corporation (DOMAC) tendered for filing: (1) A report reflecting the calculation of refunds, in Docket No. RP83-138-000; and (2) revised tariff sheets to be effective April 1, 1984. DOMAC states its refunds are calculated based on rates



and revised tariff sheets as approved by Commission letter order dated January 11, 1985. The report shows that DOMAC has a refund, with interest, of \$4,294,968.24 for the period April 1, 1984, through February 11, 1985, for customers to its Rate Schedule TS-1.

On February 11, 1985, DOMAC tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1: Original Sheet No. 7; a separate sheet indicating that Original Sheet Numbers 8-15 are reserved for future use; Substitute Seventh Revised Sheet No. 17; Substitute Sixth Revised Sheet No. 18; Original Sheet No. 21; and Original Sheet No. 23.

On February 13, 1985, DOMAC tendered for filing the following tariff sheets that had inadvertently been omitted from its February 11, 1985 filing: Original Sheet No. 24; Original Sheet No. 29A; Substitute Third Revised Sheet No. 45; and a separate sheet indicating that Original Sheet Nos. 25-27 are reserved for future use.

DOMAC states that copies of these filings were mailed to each of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4681 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-002]

#### El Paso Natural Gas Co.; Compliance Filing

February 21, 1985.

Take notice that on February 15, 1985, El Paso Natural Gas Company ("El Paso") submitted a filing in compliance with the Federal Energy Regulatory Commission's ("Commission") order issued January 31, 1985 at Docket No. RP85-58-000 which, among other things,

conditionally accepted, to be effective July 1, 1985 subject to refund, certain tariff sheets tendered as part of El Paso's notice of change in rates for jurisdictional natural gas service filed December 31, 1984 pursuant to Section 4(d) of the Natural Gas Act. Ordering paragraph (G) of said order directed El Paso to file revised tariff sheets, within 15 days of the order issue date, reflecting the elimination of all cash working capital.

In its initial filing in this proceeding, El Paso included a cash working capital allowance of \$22,804,493 determined based upon the fully-developed lead-lag study filed in support of El Paso's prior systemwide rate increase filing at Docket No. RP82-33, *et al.*, which El Paso submits was proper and fully consistent with Article XIX, *Cash Operating Allowance*, of the settlement agreement in that proceeding. Article XIX provided that "[u]nless accompanied by a fully-developed lead-lag study, any future El Paso filing pursuant to Section 4 of the Natural Gas Act . . . shall reflect 22.3 days [6.2%]." To determine the cash working capital allowance included in the initial filing in this proceeding, El Paso applied the lead-lag factors employed in the Docket No. RP82-33 study to the cost data developed for this notice to verify the cash working capital to be included. That lead-lag analysis resulted in something over \$23 million which would have exceeded the 6.2% stipulated in the Docket No. RP82-33 settlement. To abide by the 6.2% limit, El Paso reduced its cash working capital claimed in this filing to an amount equating to 6.2%.

El Paso maintains that the cash working capital allowance claimed in this proceeding is not only supported by a fully-developed lead-lag study but is also consistent with the settlement agreement at Docket No. RP82-33. Therefore, El Paso requests that the Commission reconsider its requirement that El Paso file revised tariff sheets reflecting elimination of all cash working capital and permit the tariff sheets included in El Paso's initial filing which were accepted and suspended by the Commission's January 31, 1985 order to be placed into effect July 1, 1985 subject to refund. Should the Commission deny such request, El Paso tendered, for filing and acceptance pursuant to Part 154 of the Commission's Regulations, Substitute Fourteenth Revised Sheet No. 1-D.2 to its FERC Gas Tariff, Third Revised Volume No. 2. El Paso states that such tender is being made under protest and should not be construed as a concession by El Paso that its initial filing was improper or that the Commission's finding with respect to

El Paso's inclusion of a cash working capital allowance was correct.

Subsequent to the settlement of El Paso's prior rate proceeding at Docket No. RP82-33, the Commission, in Order No. 383 issued June 13, 1984, at Docket No. RM83-52-000, modified its regulations regarding cash working capital to require inclusion of certain components in any lead-lag study developed to support the computation of cash working capital claimed as an adjustment to the utility's rate base. El Paso states that the lead-lag study initially prepared and submitted as part of the filing at Docket No. RP82-33 conformed with the Commission's new regulations at 18 CFR 154.63(f), *Statement E—Working Capital*, incorporating all required components. However, during settlement negotiations certain of those components (federal and state income taxes and other taxes) were removed. Therefore, El Paso has recalculated its cash working capital allowance in this proceeding utilizing the lead-lag factors employed in the study performed for Docket No. RP82-33 and approved by the parties but has applied those factors to all components required by the Commission's Regulations, not just those stipulated for inclusion at Docket No. RP82-33. When these additional components are included, the resulting cash working capital allowance is \$12,005,000.

Because the rate increase proposed in El Paso's initial filing was less than that necessary to fully recover its projected revenue deficiency, El Paso states that reduction of cash working capital included in rate base from the initially claimed \$22,804,493 to \$12,005,000 and the resultant decrease in cost of service has no effect on the alternative 7.08¢ per dth increase in sales rates currently under suspension in this proceeding; rather, such elimination reduces the portion of the revenue deficiency to be absorbed by El Paso. Reduction of cash working capital does, however, result in the following decreases in rates for transportation and related services currently under suspension: 0.07¢ for Mainline Transmission, 0.08¢ for Processing and 0.01¢ for Dehydration Only, which adjustments are reflected in the rates set forth on tendered Sheet No. 1-D.2. In the event the Commission chooses to deny El Paso's request for reconsideration and permission to place the initially filed and suspended tariff sheets into effect on July 1, 1985, El Paso requests that tendered Sheet No. 1-D.2 be substituted for its counterpart filed December 31, 1984 at Docket No. RP85-58-000 and made effective July 1, 1985,



subject to refund, as provided for in the Commission's January 31, 1985 order.

El Paso also included in the filing an alternate Substitute Fourteenth Revised Sheet No. 1-D.2 to its third Revised Volume No. 2 Tariff setting forth rates for transportation and related services which reflect elimination of the entire \$22,804,493 cash working capital allowance included in the rate base used to establish the rates proposed in El Paso's initial filing. El Paso believes there is sufficient evidence to support the Commission's grant of El Paso's primary request or, alternatively, acceptance of tendered Sheet No. 1-D.2, and states that it submitted alternate Substitute Fourteenth Revised Sheet No. 1-D.2 solely to comply with the strict letter of the Commission's January 31, 1985 order.

El Paso states that copies of the filing have been served upon all parties of record in this proceeding and, otherwise, upon all interstate pipeline system customers of El Paso and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before March 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4682 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7975-001]

**Los Gatos Associates; Surrender of Preliminary Permit**

February 21, 1985.

Take notice that Los Gatos Associates, the Permittee for the proposed Terrie Cox Project No. 7975, has requested that its preliminary permit be terminated. The preliminary permit was issued on July 20, 1984, and would have expired on December 31, 1985. The project would have been located on Los Gatos Creek in Santa Clara County, California. The Permittee states that a

preliminary study found that the project would not be economically feasible to develop at this time.

The Permittee filed the request on February 1, 1985, and the preliminary permit for Project No. 7975 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4684 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7529-001]

**Missouri Hydro Associates; Surrender of Preliminary Permit**

February 21, 1985.

Take notice that Missouri Hydro Associates, Permittee for the proposed Wappapello Power Project No. 7529, requested by letter dated January 28, 1985, that its preliminary permit be terminated. The preliminary permit was issued on January 20, 1985, and would have expired on December 31, 1986. The project would have been located on the Saint Francis River in Wayne County, Missouri.

The Permittee filed the request on January 31, 1985, and the preliminary permit for Project No. 7529 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4685 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-274-008]

**Mountain Fuel Resources, Inc.; Tariff Filing**

February 20, 1985.

Take notice that Mountain Fuel Resources, Inc. (Resources) on February 13, 1985, tendered for filing and acceptance First Revised Sheet Nos. 333,

and 505 through 513-A to Resources' FERC Gas Tariff, Original Volume No. 3.

Resources states that the tariff sheets are being submitted to comply with conditions associated with the authority granted in the captioned docket allowing Resources to add and delete points of receipt of natural gas into its transmission system contingent upon the submittal of an annual tariff update detailing the changes for each applicable certificated transportation agreement.

Resources states that the submitted tariff sheets are reflective of executed contract amendments for the addition and deletion of receipt points under Rate Schedules X-24 and X-32 during 1984, under its current certificate authority.

Resources states that all other applicable certificated transportation agreements have not been amended during 1984 because no additions or deletions of receipt points occurred.

Resources has requested waiver of any rules or regulations the Commission deems necessary in order to make the tariff sheets effective on March 15, 1985.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 27, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4686 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-3-37-000 and TA84-3-37-001]

**Northwest Pipeline Corp.; Change in Rates Pursuant to Purchased Gas Cost Adjustment**

February 21, 1985.

Take notice that on February 14, 1985, Northwest Pipeline Corporation ("Northwest") tendered for filing a proposed change in rates applicable to



service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA"), of its FERC Gas Tariff, First Revised Volume No. 1. Such change in rates is for the purpose of: (1) reflecting changes in Northwest's estimated cost of purchased gas; (2) reflecting the change in unrecovered purchased gas costs since Northwest's PGA filing dated February 15, 1984; and (3) projecting incremental surcharges to be assessed Northwest's affected direct and sales for resale customers pursuant to Order 49.

The current PGA adjustment, for which notice is given herein, aggregates to a decrease of 0.007¢ per therm (including elimination of the special surcharge of 0.044¢ per therm) in the commodity rate for all rate schedules affected by and subject to the PGA. There is no change in demand rates. The annual change in Northwest's rates is a decrease of approximately \$190,000. Northwest has requested waiver of its tariff provisions in order to allow an effective date of May 1, 1985, concurrent with the effective date of Northwest's general rate filing in Docket No. RP85-13-000. Northwest proposes to recover through an twelve-month surcharge the adjusted balance of \$19,769,156 in its current deferral sub-account of FERC Account No. 191, as of December 31, 1984. The proposed rate changes have been reflected on Eighteenth Revised Sheet No. 10.

Northwest also tendered for filing and acceptance Tenth Revised Sheet No. 10-B. Tenth Revised Sheet No. 10-B sets forth revised projected incremental pricing surcharges to become effective April 1, 1985, as part of the instant filing.

A copy of this filing has been served on all parties of record in Docket No. RP72-154, upon all jurisdictional customers, and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR. Doc. 85-4687 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-18-000]

# **Point Arguello Natural Gas Line Co.; Adoption of Environmental Impact Statement**

February 22, 1985.

## **Introduction**

On October 9, 1984, Point Arguello Natural Gas Line Company (PANGL) filed an application for a certificate of public convenience and necessity pursuant to section 7(c) of the National Gas Act, authorizing it to construct and operate an offshore/onshore natural gas pipeline system off Santa Barbara County, California. The Point Arguello Gas System (PAGS) would be part of the development of the Point Arguello Field in the Federal outer continental shelf (OCS) and would consist of about 10 miles of 20-inch diameter natural gas pipeline, offshore from Platform Hermosa on lease tract P-0316, to a shoreline crossing approximately 1.25 miles north of Point Conception; and about 16 miles of onshore 20-inch diameter natural gas pipeline, from Point Conception to new gas processing facilities near Gaviota, Santa Barbara County. The capacity of PAGS would be 160,000 Mcfd.<sup>1</sup>

Initial development of the Point Arguello Field would also involve construction of a 24-inch diameter oil pipeline parallel to the gas line, three offshore platforms, and the onshore oil and gas processing facility at Gaviota.

The U.S. Minerals Management Service (MMS) served as the lead Federal agency in preparing a comprehensive environmental impact statement (EIS) for development of the Point Arguello Field.<sup>2</sup> The Commission staff provided input on a cooperating basis. All facilities under Commission jurisdiction, those proposed in Docket No. CP85-18-000, were analyzed in that EIS and the Commission staff believes that all environmental issues relevant to Commission activities have been appropriately covered. Distribution of the EIS included all appropriate governmental bodies and the affected public. Therefore the Commission staff

adopts the MMS EIS and will not recirculate it.

## **The Commission's Place in Development of the Point Arguello Field**

The Commission action in the development of the Point Arguello Field is limited to approval of the PAGS connecting platform Hermosa to the oil and gas processing facility at Gaviota. MMS has primary Federal authority over Hermosa and all other platforms in the Federal OCS. MMS has jurisdiction over the OCS portion of the Hermosa to Gaviota oil pipeline; and various state and local bodies, primarily the State Lands Commission and the County of Santa Barbara, have primary jurisdiction within the three-mile limit and onshore. MMS and the Commission have joint jurisdiction over PAGS on the OCS; whereas, inside the three-mile limit, only the Commission has Federal approval authority over PAGS. The Commission has no jurisdiction over the location of the oil pipeline.

## **Review of Environmental Issues Related to FERC Action**

The environmental impact of PAGS construction and operation which would result from Commission approval of the project is secondary to that of the oil pipeline and would add very little to the overall impact of the oil pipeline and oil and gas processing facilities because:

(a) The PAGS would occupy the same onshore right-of-way as the oil pipeline;

(b) The right-of-way clearing and attendant impact would occur even if PAGS were not approved; and

(c) The location of the oil pipeline right-of-way has already been chosen and approved by state and local authorities who cooperated in the preparation of the MMS EIS.

Our review of the approximately 165 conditions placed on the two pipelines by the county and agreed to by PANGL indicates the Commission need not impose additional requirements for environmental mitigation as part of the NEPA process.

Any official comments based on this notice should be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426. Written comments must be submitted by March 22, 1985, and should reference Docket No. CP85-18-000.

Additional information concerning environmental issues is available from Mr. John Leiss, Project Manager, at the

<sup>1</sup> One Mcfd = 1,000 cubic feet of gas per day.

<sup>2</sup> Point Arguello Field and Gaviota Processing Facility Area Study and Chevron/Texaco Development Plans EIR/EIS, OCS EIS MMS 84-0061, November 1984.



above address (Room 7102), or by telephone at (202) 357-9041.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4688 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

#### Portland General Electric Co. et al.; Representatives to Joint State Board

In the matter of Portland General Electric Company; Docket Nos. ER82-462-001, ER82-539-000, ER82-734-000, ER82-810-000, ER83-127-000, ER83-540-000, ER83-573-000, ER83-748-000, ER84-163-000, ER84-042-000, ER84-347-000, ER84-403-000; Puget Sound Power and Light Company, Docket Nos. ER82-448-001, ER82-715-000, ER83-044-000, ER83-045-000, ER83-046-000, ER83-187-000, ER83-334-000, ER83-541-000, ER83-567-000, ER83-706-000, ER84-040-000, ER84-198-000, ER84-305-000; Idaho Power Company, Docket Nos. ER82-618-001, ER82-622-000, ER83-661-000, ER83-241-003, ER83-867-000, ER83-712-000; Montana Power Company, Docket Nos. ER83-382-001, ER84-026-000, ER84-156-000; Order Appointing Representatives to Joint State Board.

Issued: February 20, 1985.

In the order in these proceedings issued July 25, 1984, the Commission set for hearing a number of dockets concerning rates for sales of power by investor-owned utilities at their average system cost to the Bonneville Power Administration. The Commission also reconvened the previously appointed Joint State Board for the purpose of providing written comments on the recommended decision of the presiding administrative law judge.<sup>1</sup> That order requested that affected State commissions wishing to nominate a new member to serve on the reconvened Joint State Board submit nominations to the Chairman of this Commission.

In response to the order of July 25, 1984, the participating State commissions have nominated the following representatives to the Joint State Board:

#### Members

Richard S. High, Commissioner, Idaho Public Utilities Commission  
John B. Driscoll, Commissioner,  
Montana Public Service Commission

Gene Maudlin, Commissioner, Oregon Public Utility Commission  
A.J. Pardini, Commissioner, Washington Utilities and Transportation Commission

#### Alternates<sup>2</sup>

Howard Ellis, Commissioner, Montana Public Service Commission.

The Commission accepts these nominations and will appoint the above named persons to the reconvened Joint State Board, with duties and responsibilities as set forth in the order of July 25, 1984, in these proceedings.<sup>3</sup> In addition, the Commission will reappoint Ernst Liebman, Administrative Law Judge, as the Commission's representative on and presiding Federal member of the Board, to have the duties and responsibilities set forth in the order originally convening the Joint State Board.<sup>4</sup>

#### The Commission orders:

(A) The Commission hereby appoints the following representatives to the Joint State Board convened in these proceedings by the order of July 25, 1984: Ernst Liebman, presiding member, Richard S. High, John B. Driscoll, Gene Maudlin, A. J. Pardini, members, and Howard Ellis, alternate.

(B) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4689 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. ER85-194-000]

#### Southwestern Electric Power Co.; Order Accepting for Filing and Suspending Rates, Noting Intervention, Ordering Summary Disposition, and Establishing Hearing and Price Squeeze Procedures

Issued February 19, 1985.

On December 21, 1984, Southwestern Electric Power Company (SWEPCO) tendered for filing a proposed two-step increase in its rates for firm power

<sup>1</sup> While the order of July 25, 1984 does not specifically mention appointment of alternate Board members, the original Joint State Board had an alternate member for each State. Only the Montana Commission has nominated an alternate member to the current Board. Other State commissions wishing to nominate new alternate members may make such nominations within thirty days (30) of issuance of this order by sending a letter of nomination to the Chairman of this Commission.

<sup>2</sup> See note 1, *supra*.

<sup>3</sup> *Pacific Northwest Electric Power Planning and Conservation Act—Rates for Sale to Bonneville Power Administration*, 17 FERC ¶61,005 (1981).

service to the City of Siloam Springs, Arkansas (City).<sup>1</sup> The proposed Step A rates would increase revenues by approximately \$1.4 million (28%), based on the twelve month period ending March 31, 1986. The proposed Step B rates would result in an additional increase of approximately \$185,000, representing a total increase of \$1.6 million (31%) for the same period. Approximately 14.4% of the increase represents the inclusion of construction work in progress (CWIP), pursuant to § 35.26(c)(3) of the Commission's regulations. SWEPCO requests that the Step A and Step B rates become effective on February 20 and February 21, 1985, respectively, or on the commercial operation date of Henry W. Pirkey Unit No. 1, whichever is later.<sup>2</sup> However, in the event that the Step B rates are suspended for one day, SWEPCO requests that the proposed Step A rates be deemed withdrawn. In addition, the company requests that any hearing in this docket include the question of whether SWEPCO may be allowed a waiver of § 35.14 of the Commission's regulations to permit recovery through SWEPCO's wholesale fuel adjustment clause of amounts paid for power purchased from cogenerators and small power producers.

Notice of SWEPCO's filing was published in the Federal Register,<sup>3</sup> with comments due on or before January 4, 1985. City filed a timely motion to intervene, requesting summary disposition, a five month suspension, and a hearing. In support of its request for a five month suspension of both steps of the proposed increase, City cites various cost of service and rate design issues, including: (1) The rate of return on common equity; (2) regulatory expenses; (3) the energy allocation factor used; (4) synchronization of the interest expense deduction for income tax purposes; (5) inclusion of deferred income taxes related to allowance for funds used during construction (AFUDC) without including a corresponding interest deduction; (6) allocation of the Pirkey Unit investment and related expenses to City; (7) off-system sales estimates; (8) depreciation; (9) cash working capital; (10) lignite fuel inventory; (11) State and deferred

<sup>1</sup> See Attachment for rate schedule designations.

<sup>2</sup> SWEPCO states that, under the terms of a settlement agreement between the company and City in Docket No. ER80-337-000, SWEPCO may not seek to make this proposed increase effective prior to the date of commercial operation of the Pirkey Unit or July 1, 1985, whichever is earlier. However, SWEPCO anticipates that the unit will be placed in commercial operation before February 1, 1985.

<sup>3</sup> 50 FR 531 (1985).

<sup>4</sup> *Pacific Power and Light Co., et al.*, 28 FERC ¶61,143 (1984); *reh. den.*, *Portland General Electric Co., et al.*, 29 FERC ¶61,044 (1984). The Joint State Board was originally convened for the purpose of providing comments on the "average system cost methodology" filed by Bonneville Power Administration pursuant to section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. § 839-839b (1962).



income taxes; (12) use of an 85% summer demand ratchet; and (13) the fuel clause treatment sought by the company. City requests summary disposition with regard to SWEPCO's synchronization of the interest expense deduction and the inclusion of deferred income taxes without a corresponding interest deduction. City also requests summary disposition, if appropriate, for any other issues raised in support of its suspension request. Referencing its settlement agreement with the company, City asserts that the Commission should not permit an effective date prior to July 1, 1985, absent a written certification from SWEPCO as to the actual commercial service date of the Pirkey Unit. Finally, City alleges that the proposed rates may create a price squeeze.

On January 29, 1985, SWEPCO filed a response to City's pleading. While not objecting to City's intervention in this proceeding, SWEPCO opposes City's requests for a five month suspension and summary disposition as to calculation of the AFUDC-related tax expense and the company denies the allegations supporting those requests. However, SWEPCO acknowledges that summary disposition is appropriate with respect to its synchronization of interest expense, and requests that it be allowed to refile its rates to reflect the necessary adjustments. In response to City's assertions regarding the proposed effective dates, the company attaches a letter from the manager of its rate department which states that the Pirkey Unit was placed in commercial operation as of January 3, 1985.

#### Discussion

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), City's timely and unopposed motion to intervene serves to make it a party to this proceeding.

As alleged by City and acknowledged by the company, SWEPCO has not properly synchronized the interest expenses deduction for income tax purposes. Specifically, the company has failed to include construction-related interest as an income tax deduction and to compute the deferred tax provision in a manner consistent with the level of the construction interest deduction. Therefore, we agree that summary disposition as to this issue is warranted.<sup>4</sup> In this regard, we note that,

although SWEPCO recognizes that interest synchronization is required by this Commission, it continues to evidence an apparent misunderstanding of the mechanics and calculations required to synchronize interest in its cost of service. In addition, we note that SWEPCO has included accumulated deferred investment tax credits (ADITC) as a separate component of its capital structure. This treatment is contrary to well-established Commission precedent.<sup>5</sup> Accordingly, we shall order summary disposition with respect to this item as well. Because the revenue impact of these decisions is substantial, we shall require SWEPCO to file revised cost of service statements and rates. However, to afford the company the opportunity to discuss the proper adjustments before refile, we shall direct SWEPCO to make its revised filing within 30 days after the first prehearing conference held in this docket.

We find that the other issues raised by City, including SWEPCO's requested fuel clause treatment discussed above, present questions of law or fact more appropriately resolved on the basis of an evidentiary hearing.

Our preliminary review of SWEPCO's filing and the pleadings indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we shall accept SWEPCO's rates for filing, as modified by summary disposition, and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that, where our preliminary review indicates that a proposed increase may be unjust and unreasonable and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our preliminary examination indicates that both the Step A and Step B rates may yield substantially excessive revenues. Accordingly, we shall suspend the proposed Step A and Step B rates, as modified, for five months from the proposed effective dates, to become effective on July 20 and July 21, 1985, respectively, subject to refund.<sup>6</sup>

<sup>4</sup> E.g., *Virginia Electric and Power Co.*, 15 FERC ¶ 61,052 (1981); *Public Service Company of New Mexico*, 14 FERC ¶ 61,194 (1981); *Public Service Company of Oklahoma*, 5 FERC ¶ 61,032 (1978).

<sup>5</sup> Given our decision to suspend both steps of SWEPCO's proposed increase for a maximum period, and the company's proposed effective dates, the Step A and B rates are to go into effect on consecutive days. We do not believe that SWEPCO intends this result which would be administratively and economically inefficient. We therefore

SWEPCO's proposed fuel clause revision may become effective prospectively only following the issuance of a final Commission order at the conclusion of this proceeding.

In light of City's price squeeze allegations, we shall institute price squeeze proceedings and phase them, in accordance with our established policy and practice. *Arkansas Power and Light Co.*, 8 FERC ¶ 61,131 (1979).

#### The Commission orders:

(A) Summary disposition is hereby ordered, as discussed in the body of this order, with respect to: (1) SWEPCO's failure to properly synchronize interest expense for tax purposes; and (2) the inclusion of ADITC as a separate component of the capital structure. Within thirty (30) days of the date of the first prehearing conference held in this docket, SWEPCO shall file revised rates and cost support statements to reflect these adjustments. All other requests for summary disposition are hereby denied.

(B) SWEPCO's Step A and Step B rates are hereby accepted for filing, as modified by Paragraph (A) above, and are suspended for five months from the proposed effective dates, to become effective on July 20 and July 21, 1985, respectively, subject to refund. The proposed fuel clause revision shall take effect, if at all, prospectively only following a final Commission order in this proceeding.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of SWEPCO's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North

encourage and authorize SWEPCO to forego collection of the Step A rates and to collect only the Step B rates as of July 21, 1985. We also note that the five month suspension ordered here moots any further concern as to the effective dates for the proposed rates in light of the parties' settlement agreement in Docket No. ER80-337-000.

<sup>6</sup> See *Duke Power Co.*, 26 FERC 61,248 (1984); *Gulf States Utilities Co.*, 20 FERC ¶ 61,039 (1982).



Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,  
Secretary.

#### Attachment

##### *Southwestern Electric Power Company*

(1) Supplement No. 6 to Rate Schedule FPC No. 66 (Supersedes Supplement No. 5); Step A.

(2) Supplement No. 7 to Rate Schedule FPC No. 66 (Supersedes Supplement No. 6); Step B.

(3) Supplement No. 8 to Rate Schedule FPC No. 66 (Lignite Mining Agreement). [FR Doc. 85-4090 Filed 2-25-85; 8:45]

BILLING CODE 6717-01-M

[Docket No. TA85-1-9-003]

##### **Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Tariff Filing**

February 21, 1985.

Take notice that on February 14, 1985, Tennessee Gas Pipeline Company, a division of Tenneco, Inc. (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1: Substitute Thirteenth Revised Sheet No. 21 Second Revised Sheet No. 218.

Tennessee states that it is refiling its Revised Sheet No. 21 to reflect the removal of non-recoupable take-or-pay payments of \$4,438,758 from Account No. 191 in accordance with Ordering Paragraph (B) of the Commission's Order Accepting for Filing and Suspending Tariff Sheets Subject To Refund Conditions issued December 31,

1984, in *Tennessee Gas Pipeline Company, a Division of Tenneco, Inc.*, Docket Nos. TA85-1-9-000, et al., and the Commission's Notice Denying Motion for Extension of Time issued February 8, 1985 in the same proceeding. The removal of these take-or-pay payments will reduce Tennessee's Surcharge for Amortizing the Unrecovered Purchased Gas Cost Account by 1.03 cents per dth. The proposed effective date of this tariff sheet is January 1, 1985.

Tennessee states that the purpose of Second Revised Sheet No. 218 is to reflect that GRI collections are to be remitted to GRI within 15 days of receipt as required by Ordering Paragraph (C) of the Commission's Opinion No. 226 issued September 28, 1984, in *Gas Research Institute*, Docket No. RP84-85-000. The proposed effective date of this tariff sheet is March 17, 1985.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before March 1, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4691 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP84-108-002]

##### **Texas Eastern Transmission Corp.; Motion To Place Revised Tariff Sheets Into Effect**

February 21, 1985.

Take notice that on February 8, 1985, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing a Motion To Place Revised Tariff Sheets Into Effect (Motion) in accordance with the Federal Energy Regulatory Commission's (Commission) September 12, 1984, order issued in Docket No. RP84-108-000. The revised

tariff sheets attached to the Motion reflect the following changes from those originally accepted: (A) The cost of purchased gas and the purchased gas cost surcharge adjustment reflected in Texas Eastern's most current PGA filing; (B) The electric power adjustment reflected in the most current PGA filing; (C) The most recent SS-II and ISS-III rates filed pursuant to Section 4.F and 4.E, respectively, of Texas Eastern's SS-II Rate Schedule and ISS-III Rate Schedule; (D) Modification of Texas Eastern's proposed change in its PGA clause pursuant to Ordering Paragraph (B) of the Commission's September 12, 1984 order; and (E) Correction of a typographical error on "First Revised Sheet No. 122."

Texas Eastern requests waiver of the regulations to the extent necessary to permit the tariff sheets attached to its Motion to become effective February 13, 1985, subject to refund.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before February 28, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,  
Secretary.

[FR Doc. 85-4692 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP85-236-000, et al.]

##### **Natural Gas Certificate Filings; Panhandle Eastern Pipe Line Company, et al.**

Take notice that the following filings have been made with the Commission:

##### **1. Panhandle Eastern Pipe Line Company**

[Docket No. CP85-236-000]

February 14, 1985.

Take notice that on January 22, 1985, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP85-236-000 a request pursuant to § 157.205



of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport up to 2,000 Mcf of gas per day and up to 730,000 Mcf of gas per year on an interruptible basis on behalf of R.M.I. Company (RMI) for use in process furnaces and dryers, process boilers and other uses at RMI's Ashtabula, Ohio, plant, under Panhandle's blanket certificate issued in Docket No. CP83-83-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is indicated that RMI has entered into a November 12, 1984, gas purchase agreement with Union Texas Products Corporation (Union). In order for RMI to receive the gas at its plant, Panhandle indicates it would receive up to 2,000 Mcf of gas per day at an existing interconnection between Panhandle and Union in Major County, Oklahoma. Panhandle avers that it would redeliver such gas, less a four percent reduction for fuel, to the East Ohio Gas Company (East Ohio) at an existing interconnection between Panhandle and East Ohio in Maumee County, Ohio, for further transportation. It is further stated that Panhandle would charge a rate based on its currently effective OST tariff and that it would not charge an added incentive charge. Panhandle also indicates that EMI has represented that Rebel Energy Consulting, Inc., is acting as an agent between EMI and Union at a fee of five cents per Mcf. The term of the proposed transportation is from the date that automatic authorization expires until the earlier of (1) eighteen months from the effective date of the transportation agreement, (2) termination of the authorization as provided by Subpart F of 18 CFR Part 157 or (3) termination of the agreement by either of the parties.

Panhandle also requests flexible authority to add or delete receipt/delivery points associated with sources of gas acquired by the end-user. The flexible authority requested applies only to points related to sources of gas supply, not to delivery points in the market area. Panhandle will file a report providing certain information with regard to the addition or deletion of sources of gas as further detailed in the application and any additional sources of gas would only be obtained to constitute the transportation quantities herein and not to increase those quantities.

Comment date: April 1, 1985, in accordance with Standard Paragraph G at the end of this notice.

## 2. Columbia Gas Transmission Corporation; Columbia Gulf Transmission Company

[Docket No. CP84-111-002]

February 14, 1985.

Take notice that on January 31, 1985, Columbia Gas Transmission Corporation (Columbia Transmission), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314, and Columbia Gulf Transmission Company (Columbia Gulf), 3805 West Alabama Avenue, Houston, Texas 77027, sometimes hereinafter jointly referred to as Columbia, filed in Docket No. CP84-111-002 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to continue to transport natural gas on behalf of Appleton Paper, Inc. (Appleton), under the certificates issued in Docket Nos. CP83-76-000 and CP83-496-000, respectively, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

By notice issued January 18, 1984, pursuant to the prior notice and protest procedure set forth in Section 157.205 of the Commission's Regulations, Columbia received authorization to transport up to 1.4 billion Btu equivalent to natural gas per day through June 26, 1984, to Appleton's Camp Hill, Pennsylvania, plant.

By notice issued July 12, 1984, pursuant to the prior notice and protest procedure set forth in Section 157.205, Columbia received authorization to continue transporting up to 1.4 billion Btu equivalent of natural gas per day through October 31, 1984, to Appleton's Camp Hill, Pennsylvania, plant.

Columbia proposes to continue the above-described transportation through June 30, 1985, on the same terms and conditions as the preceding transportation authority.

Comment date: April 1, 1985, in accordance with Standard Paragraph G at the end of this notice.

## 3. National Fuel Gas Supply Corporation

[Docket No. CP84-154-001]

February 15, 1985.

Take notice that on January 31, 1985, National Fuel Gas Supply Corporation (Petitioner), 1100 State Street, Erie, Pennsylvania 16501, filed in Docket No. CP 84-154-001 a petition to amend the order issued March 13, 1984 in Docket No. CP 84-154-000 pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioner to extend the term and modify certain conditions of the off-

system sale of natural gas to Consolidated Edison Company of New York, Inc. (Con Edison), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection. Petitioner was authorized by the Commission's March 13, 1984 order to sell up to 123,000 Mcf of gas per day to Con Edison on an interruptible basis up to a period expiring March 12, 1985. Petitioner now requests authorization to sell up to 12,300,000 dt equivalent of natural gas to Con Edison during a one-year period beginning March 13, 1985, or as soon thereafter as authorized by the Commission. Petitioner states that it would continue to make such sales on an interruptible basis under a new service agreement entered into under Petitioner's I-1 Rate Schedule. It is stated that the maximum daily quantity would continue to be 123,000 dt, subject to increase at the discretion of the Petitioner upon request of Con Edison when transportation is available. Petitioner explains that its proposed I-1 rate is its 100 percent load factor rate which is expected to be \$3.7758 per dt.

It is further explained that transportation would be provided by Transcontinental Gas Pipe Line Corporation (Transco), Texas Eastern Transmission Corporation (TETCO), and/or Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) under Section 284 of the Commission's Regulations. Petitioner states that it would deliver gas to TETCO and Transco at existing interconnections outside of the State of New York, and that Tennessee would receive the gas at Rose Lake sales meter station delivery point located in Potter County, Pennsylvania, at Tennessee's main line valve 33G-121. In each case, gas would be redelivered by these transporters to Con Edison on an interruptible basis at existing delivery points, it is asserted.

Comment date: March 1, 1985, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be



considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4667 Filed 2-25-85; 8:45 am]

BILLING CODE 6717-01-M

#### Western Area Power Administration

#### Conformed General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects; Corrections

AGENCY: Western Area Power Administration, DOE.

#### ACTION: Notice.

**SUMMARY:** In Federal Register Volume 49 FR 50582, December 28, 1984, make the following corrections:

On page 50582: In the third column, Part 1, Section C, fourth paragraph, third line, change the number "561145" to "56145".

On page 50584: In the third column, in the fourth paragraph, fifth line, delete last sentence, "Long-term contracts for the Boulder Canyon Project will be subject to an energy revision on or about October 1, 2007, if deemed necessary by Western, due to the results of then current hydrology studies."

On page 50585: In the second column, in the last paragraph, fourth line, change "amorization" to "amortization".

On page 50586: In the first column, Section B, second line, change "peiod" to "period."

In the third column, fifth line, change "Coordianting" to "Coordinating".

On page 50587: In the second column, Section B, fourth line, change "conractor" to "contractor".

In the second column, in Section B, second paragraph, third line, change "contractor" to "contractors".

In the third column, first table, change "winer" to "winter".

In the second and third column, Table title "Long-term Contingent Capacity and Associated Firm Energy Reserved For Renewal Contract Offers To Current Boulder Canyon Project Contractors", third and fourth column heading, change "Summer" to "Energy, Summer, (thousands of KWh)" and change "Energy (thousands of KWh) Winter" to "Energy, Winter, (thousands of kWh)".

On page 50588: In the first column, section B, first line, delete period after "Program" and add "—Long-Term Contingent Power."

In the third column, Section F, eighth line, add "bears" between "entitled" and "to".

On page 50589: In the second column, Section C, seventh line, change the sentence, "The designated points of Appendix E, respectively, and may be modified as required" to "The designated points of delivery and transmission systems are those specified by Appendix D and Appendix E, respectively, and may be modified as required".

In the third column, Appendix A, first line, insert "are" between the words "Area" and "the following".

On page 50590: In the first column, eighteenth line, item b, change "County" to "Valley".

In the second column, item number three, change the word "Cortaroi" to "Cortaro".

In the second column, item 10, change "Pinal" to "Maricopa".

In the second column, item 11, line two, change "Conservaiton" to "Conservation".

Issued in Golden, Colorado, February 19, 1985.

William H. Clagett,

Acting Administrator.

[FR Doc. 85-4699 Filed 2-25-85; 8:45 am]

BILLING CODE 6450-01-M

#### FEDERAL COMMUNICATIONS COMMISSION

#### Jack Clarke III, et al.; Hearing Designation Order

In the matter of applications of:

|                               |                                              |
|-------------------------------|----------------------------------------------|
| Jack Clarke, III.....         | MM Docket No. 85-10; File No. BPCT-840802KK. |
| Conroe Communications Co.,    | File No. BPCT-840803KF.                      |
| Luis Y Nelida Castaneda ..... | File No. BPCT-840920KG.                      |
| Brokinrod Broadcasting Co.,   | File No. BPCT-840920KH.                      |
| Inc.                          | File No. BPCT-840921LC.                      |
| San Jacinto Television Corp., |                                              |

For Construction permit for a New Television Station Conroe, Texas.

By the Chief, Video Services Division.

Adopted: January 21, 1985.

Released: February 14, 1985.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 49, Conroe, Texas.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been reached that the tower heights and locations proposed by Conroe Communications Company<sup>1</sup> and San Jacinto Television

<sup>1</sup> The Commission is not in receipt of FAA's determination for the tower proposed by Conroe Communications.



Corp. would not each constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. In addition, the Commission has been informed that the Federal Aviation Administration approved a tower height above ground level (AGL) for Luis Y. Castaneda at 499 feet. The Castaneda application, however, specifies a tower of 507 feet AGL. Castaneda must, therefore, within 20 days after release of this Order, either (1) amend the application to specify a 499 foot tower or (2) advise the Administrative Law Judge that it wishes to proceed with the 507 feet tower. In the second case, the Administrative Law Judge should take whatever steps he believes appropriate, including the specification of an air hazard issue.

5. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. While Brokinrod Broadcasting proposes the use of a directional antenna, it has not supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

6. Section V-C, Item 7, FCC Form 301, requires an applicant to indicate whether it proposes to use a directional antenna or non-directional antenna. Jack Clarke indicates in Section V-C, Item 7, that a non-directional antenna will be used, but in Exhibits 1, 2, and 4, the applicant indicates that a directional antenna will be used. Accordingly, Jack Clarke must submit an appropriate amendment to the Administrative Law Judge within 20 days after this Order is released. If the applicant indicates that he will use a directional antenna, he will be required to supply the information indicated in paragraph 5, *supra*.

7. Section 73.355(c)(3) of the Commission's Rules states that no license for a television station shall be granted to any party if such party directly or indirectly owns, operates, or controls a daily newspaper and the grant of such license will result in the Grade A contour of the proposed television station encompassing the entire community in which such newspaper is published. Jack Clarke is a limited partner with a 2/35th interest in the Conroe Morning News, a daily newspaper published in Conroe, Texas.

Billie Brooks is a 90 percent stockholder of Brokinrod Broadcasting Company, Inc. Her husband, Henry Brooks, owns a 1/35th "interest" in the Conroe Morning News.<sup>2</sup> Although Brooks has not explained the nature of this interest, the Clarke application describes the ownership of the Conroe Morning News as a limited partnership. In both cases we lack sufficient information to determine whether these are attributable interests, within the guidelines set out in *Attribution of Ownership Interests*, 55 R.R. 2d 1465 (1984). Nonetheless, Messrs. Brooks and Clarke have both represented that each will divest his interest in the newspaper if the relevant television application is granted. Rather than specify an issue, therefore, we shall impose an appropriate condition to assure compliance with the Commission's Rules and policies.

8. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

9. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine with respect to Conroe Communications Company and San Jacinto Television Corp., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

10. It is further ordered, That Luis Y. Nelida Castaneda shall submit an amendment clarifying the correct height above ground, as discussed in Paragraph 4 of this Order, with the presiding Administrative Law Judge within 20 days after this Order is released.

<sup>2</sup> Normally, the interests of each spouse are attributable to the other spouse. *Lady Sarah McKinney-Smith*, 59 F.C.C. 2nd 398 (1970).

11. It is further ordered, That Brokinrod Broadcasting Company, Inc. shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules to the presiding Administrative Law Judge and a copy each to the TV Branch, Mass Media Bureau and the Hearing Branch, Enforcement Division, within 20 days after this Order is released.

12. It is further ordered, That Jack Clarke shall submit an appropriate amendment as required by paragraph 6, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

13. It is further ordered, That, in the event of a grant of Jack Clarke's application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Jack Clarke has divested himself of all interest in and connection with the Conroe Morning News.

14. It is further ordered, That, in the event of a grant of Brokinrod Broadcasting Company, Inc.'s application, it will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Henry Brooks has divested himself of all interest in and connection with the Conroe Morning News.

15. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

16. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

17. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.



## Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4625 Filed 2-25-85; 8:45]

[BILLING CODE 6712-01-M]

[MM Docket No. 85-18; File Nos. BPCT-8406613KJ and BPCT-840828KF]

**Fredericksburg Broadcasting Group and Rappahannock Cablecast Co., Inc.; Hearing Designation Order**

In the matter of applications of:

|                             |                    |
|-----------------------------|--------------------|
| Zeather Willis et al, d/b/a | MM Docket No. 85-  |
| Fredericksburg Broad-       | 18; File No. BPCT- |
| casting Group.              | 8406613KJ.         |
| Rappahannock Cablecast      | File No. BPCT-     |
| Co., Inc.                   | 840828KF.          |

For Construction Permit for New Television Station Fredericksburg, Virginia.

Adopted: January 23, 1985.

Released: February 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 69, Fredericksburg, Virginia.

2. No determination has been reached that the tower height and location proposed by each of the applicants<sup>1</sup> would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

3. There is the potential for a television station operating on Channel 69 to cause objectionable interference to existing land mobile radio facilities operating in the 806-816 MHz band. Section 73.687(i)(1) of the Commission's Rules imposes upon the television station permittee the obligation to take adequate measures to identify and substantially eliminate such interference. This obligation may require the expenditure of substantial resources by the winning applicant for whatever corrective measures may be necessary. See, e.g., *Jack Straw Memorial Foundation*, 35 F.C.C. 2d 397, *recon. denied*, 37 F.C.C. 2d 544 (1972); *Sudbrink Broadcasting of Georgia*, 65 F.C.C. 2d 691 (1977). Therefore, a grant of either of these applications will be subject to an appropriate condition.

4. Section V-C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour.

Rappahannock has not specified the population within its Grade B contour. Consequently, we are unable to determine whether there would be a significant difference in the size of the populations that FBG and Rappahannock each proposes to serve. Accordingly, Rappahannock will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the populations to be served under the standard comparative issue.

5. On July 13, 1984, FBG filed an amendment to its application showing, in its Exhibit D, calculated contours which appear to have been computed using effective radiated powers (ERP) indicated in the exhibit attached to the amendment and labelled "Tabulation of Relative Field Pattern." The ERPs are not correctly determined since the relative field strength values are treated as relative power values. For example, the table entry at 140° True shows a relative field strength of .50, resulting in an ERP of 33.98 dBK, which is 3.02 dB below the maximum ERP of 37.0 dBK. The correct power for a relative field strength of .50 is 6 dB below the maximum ERP. FBG must, therefore, recalculate its contours using the correct ERP values and submit the correction as an amendment. Additionally, because the maps which the applicant submitted are illegible and incomplete, the applicant will be required to submit legible maps which contain all of the information required by Section V-C, paragraph 10, FCC Form 301. These amendments must be filed with the presiding Administrative Law Judge within 20 days after this Order is released.

6. FBG's Exhibit 1 to the July 13, 1984 amendment, discussed above, shows a maximum ERP of 9,015 kW, whereas § 73.614(b) of the Rules limits the ERP of a UHF station to 5,000 kW. FBG will be required to file an appropriate amendment to conform its power to the limits established by the Rules.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by each of the applicants would constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That, in the event of a grant of either of the applications, the construction permit shall contain the following condition:

During equipment tests, authorized by § 73.1610 of the Commission's Rules, the permittee shall take adequate measures to identify and substantially eliminate objectionable interference which may be caused to existing land mobile radio facilities in the 806 to 816 MHz band. Documentation that objectionable interference will not be caused to existing land mobile facilities shall be submitted along with the application for a license. Program tests shall not be commenced under § 73.1620(a) of the Rules and may only be started after specific authority is granted by the Commission.

10. It is further ordered, That Fredericksburg Broadcasting Group shall submit appropriate amendments or clarifications as required by paragraph 5, *supra*, to the presiding Administrative Law Judge within 20 days after this Order is released.

11. It is further ordered, That Fredericksburg Broadcasting Group shall submit an amendment providing the information required by § 73.614(b) of the Commission's Rules, to the presiding Administrative Law Judge within 20 days after this Order is released.

12. It is further ordered, That Rappahannock Cablecast Company, Inc. shall submit an amendment which specifies the area and population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after this Order is released.

13. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

<sup>1</sup> The Commission is not in receipt of FAA's determination for the tower proposed by Fredericksburg Broadcasting Group (FBG).



14. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4627 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-17; File Nos. BPCT-840802KJ, et al.]

#### Lubbock TV 16 Broadcasting et al.; Hearing Designation Order

In the matter of applications of:

|                                                                                                                    |                                              |
|--------------------------------------------------------------------------------------------------------------------|----------------------------------------------|
| Wilbur O. Colom, Congress Street Properties, Inc., William Dilday and Les Range, d/b/a Lubbock TV 16 Broadcasting. | MM Docket No. 85-17; File No. BPCT-840802KJ. |
| Robert Quentin Martin and Cesar Amador, a Partnership.                                                             | File No. BPCT-840802KK.                      |
| TRG Broadcasting Systems, Inc.                                                                                     | File No. BPCT-840802KL.                      |

For construction permit for New TV Station Lubbock, Texas.

Adopted: January 23, 1985.

Released: February 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Wilbur O. Colom, Congress Street Properties, Inc., William Dilday and Les Range, d/b/a Lubbock TV 16 Broadcasting (Lubbock TV), Robert Quentin Martin and Cesar Amador (Martin-Amador), and TRG Broadcasting Systems, Inc. (TRG) for authority to construct a new commercial television station on Channel 16, Lubbock, Texas.

2. The effective radiated visual power, antenna height above average terrain

and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the areas<sup>1</sup> and populations which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability, of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

3. No determination has been made that the tower heights and locations proposed by TRG and Martin-Amador would not constitute a hazard to air navigation.<sup>2</sup>

4. TRG proposes a transmitter site that is located within 1.8 miles of Station KFYO(AM), Lubbock, Texas, and Martin-Amador proposes to mount its antenna on a tower within 1.76 miles of Station KLFB(AM), Lubbock, Texas. If TRG or Martin-Amador is the successful applicant for Channel 16, the construction permit shall be conditioned to ensure that the appropriate AM station's radiation pattern will not be adversely affected.

5. Section V-C, Item 9, FCC Form 301, requires an applicant: (a) If a directional antenna is proposed, to give full details, including horizontal and vertical plane radiation patterns pursuant to § 73.685 of the Commission's Rules; and (b) if electrical beam tilt is proposed, to describe fully the pertinent vertical and horizontal radiation patterns. TRG amended the model number of its antenna, but it still proposes to operate directionally and with electrical beam tilt. Its response to item 9 was not amended. TRG will be required to file with the presiding Administrative Law Judge, within 20 days after this Order is released, an amendment to its application with a correct response to Item 9.

6. Lubbock TV filed an amendment modifying its transmitter site and antenna height above average terrain, but a new tower sketch, Section V-C, Item 6, was not submitted as required. Lubbock TV will be required to submit an amendment to its application with the required information, to the presiding Administrative Law Judge,

<sup>1</sup> In response to Item 10(e), Section V-C, FCC Form 301, Martin-Amador states that the area within its Grade B contour is 1,420 square miles. A review of the Tabulation of Terrain Data shown in Item 15 indicates that the area is actually 4,540 square miles.

<sup>2</sup> The Commission's Antenna Survey Branch is not in receipt of FAA's clearance for the tower proposed by Martin-Amador.

within 20 days after this Order is released.

7. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by TRG and Martin-Amador would each constitute a hazard to air navigation.

(2) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(3) To determine, in light to the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

10. It is further ordered, That in the event that TRG is the successful applicant, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM station KFYO, Lubbock, Texas, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for



license to cover this permit, the results submitted to the Commission.

11. It is further ordered, That in the event that Martin-Amador is the successful applicant, the construction permit shall be conditioned as follows:

Prior to construction of the tower authorized herein, permittee shall notify AM station KLFB, Lubbock, Texas, so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, D.C. to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

12. It is further ordered, That TRG shall submit an amendment providing the information required by Item 9, Section V-C, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

13. It is further ordered, That Lubbock TV shall submit an amendment providing a new tower sketch, to the presiding Administrative Law Judge, within 20 days after this Order is released.

14. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

15. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4628 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M

### Kilgore Broadcasting et al.; Hearing Designation Order

In the matter of applications of:

|                                                                      |                                              |
|----------------------------------------------------------------------|----------------------------------------------|
| Zeather Willis, Elmer Montgomery, et al. d/b/a Kilgore Broadcasting. | MM Docket No. 85-27; File No. BPCT-840802KE. |
| Explorado de Miami, Inc.                                             | File No. BPCT-840919KG.                      |
| Julio and Silvia Fernandez                                           | File No. BPCT-840920KE.                      |
| Harmony Broadcasting Corporation.                                    | File No. BPCT-840920KM.                      |
| Cuban-American Limited                                               | File No. BPCT-840921KE.                      |
| Miami 35 Corp.                                                       | File No. BPCT-840921KF.                      |
| A and I Television Ltd.                                              | File No. BPCT-840921KG.                      |
| Telecentro, Inc.                                                     | File No. BPCT-840921KH.                      |
| Miami Broadcasting, Inc.                                             | File No. BPCT-840921KI.                      |
| Miami Latino Broadcasting Corp.                                      | File No. BPCT-840921KJ.                      |
| Lamar Communications, Inc.                                           | File No. BPCT-840921KK.                      |
| Hernandez, Costa and Associates.                                     | File No. BPCT-840921KL.                      |
| Adib Eden, Sr.                                                       | File No. BPCT-840921KM.                      |
| Coral Way Broadcasting, Ltd.                                         | File No. BPCT-840921KN.                      |
| Canal 35, Ltd.                                                       | File No. BPCT-840921KO.                      |
| Spanish Broadcasting Corporation.                                    | File No. BPCT-840921KP.                      |
| Comi-Centre Broadcasting, Inc.                                       | File No. BPCT-840921KQ.                      |
| Range Communications, Limited Partnership.                           | File No. BPCT-840921KR.                      |
| Grace Broadcasting Network, Inc.                                     | File No. BPCT-840921KS.                      |
| Minority Broadcasting Corporation, Inc.                              | File No. BPCT-840921KT.                      |
| First Latin Women Broadcasting, Inc.                                 | File No. BPCT-840921KU.                      |

For Construction Permit Channel 35, Miami, Florida.

Adopted: January 31, 1985.

Released: February 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 35, Miami, Florida; petitions for leave to amend and accompanying amendments filed by Julio and Silvia Fernandez (Fernandez) and Lamar Communications, Inc.; a late-filed amendment filed by Latin Women Broadcasting, Inc.; a late-filed amendment filed by A and I Television Ltd. (A and I); petitions to deny the

applications of Fernandez, Miami 35 Corp. (Miami 35) and Telecentro, Inc. (Telecentro) filed by Meredith Corporation (Meredith), licensee of WOFL(TV), Channel 35, Orlando, Florida, and South Florida Public Telecommunications, Inc. (South Florida), licensee of WHRS-TV, Channel 42, West Palm Beach, Florida; objections of the Association of Maximum Service Telecasters (AMST) filed against Fernandez, Miami 35 and Telecentro; and related pleadings.<sup>1</sup>

2. The deadline for filing amendments to the above-captioned applications was November 14, 1984 ("B" cut-off date). However, on November 27, Lamar Communications, Inc. (Lamar) filed a motion for leave to amend and an accompanying amendment. The amendment reflects that Lamar can now certify its financial qualifications and reports the addition of a new shareholder, pursuant to § 1.65 of the Commission's Rules. We have reviewed the motion and the amendment and conclude that good cause exists for accepting the amendment. However, it is not our intention to allow any comparative advantage to Lamar as a result of our action herein. First Latin Women Broadcasting, Inc. (Latin Women) filed an amendment to its application on November 16, 2 days after the "B" cut-off date. The proffered amendment, which was not accompanied by a motion for leave to amend, was filed on the "B" cut-off date, but did not contain the original certification page. The November 16, amendment corrects the omission. In view of the fact that all parties were put on timely notice concerning the nature of the amendment, we believe that the equities favor accepting the amendment. Fernandez filed a petition for leave to amend and accompanying amendment on December 6, 1984. The amendment brings the Fernandez proposal into compliance with § 73.610 of the Commission's Rules with regard to the minimum spacing requirements. The motion and amendment have been reviewed and good cause exists for accepting the amendment. However, as with Lamar, no comparative advantage will accrue to Fernandez because of our decision herein. A and I also filed an amendment on November 27, 1984, after the "B" cut-off date. The amendment

<sup>1</sup> The petitions to deny and AMST's objections are all with respect to the three applicants' failure to comply with § 73.610 of the Commission's Rules relative to the minimum mileage separation requirements. Each of the applicants amended its application to bring its proposal into compliance with the Rule. Accordingly, the petitions to deny and AMST's objections will be dismissed as moot.



was not signed by a principal and, therefore, is not acceptable for filing. Accordingly, the motions for leave to amend filed by Lamar and Fernandez will be granted and the amendments filed by Lamar, Fernandez and Latin Women will be accepted; and the amendment filed by A and I will be rejected as unacceptable for filing.

3. No determination has been reached that the tower height and location proposed by each of the applicants, except Fernandez, Explorador de Miami, Inc., Miami Broadcasting, Inc., Adib Eden, Sr., and Spanish Broadcasting Corporation, would not constitute a hazard to air navigation. Accordingly, an appropriate issue will be specified.<sup>2</sup>

4. Our review of the technical data submitted by Kilgore and Canal 35, Ltd. (Canal 35) indicates that a grant of either application would constitute a major environmental action as defined by § 1.1305(a) of the Commission's Rules. Neither Kilgore nor Canal 35 has submitted the environmental impact information described in § 1.1311. Accordingly, Kilgore and Canal 35 will each be required to file, within 20 days of the release of this Order, its environmental narrative statement with the presiding Administrative Law Judge and the Chief, Hearing Branch. In addition, a copy shall be filed with the Chief, Television Branch, who will then proceed in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules will be waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

5. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population which would be served by each. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. Section 73.685(f) of the Commission's Rules requires an

applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Telecentro, Inc., Range Communications, and Minority Broadcasting Corporation, Inc. have not supplied this data, although each of them proposes to use a directional antenna. Accordingly, the applicants will each be required to submit an amendment with the appropriate information to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch, and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

7. Miami 35 amended its technical proposal on November 14, 1984. The amendment did not include a response to Section V-C, item 10(e), FCC Form 301, regarding the area and population within the Grade B contour. It also did not include a vertical tower sketch as required by Section V-G, item 6. Miami 35 will be given 20 days from the release date of this Order to submit an amendment with its response to Section V-C, item 10(e) and the vertical tower sketch required by Section V-G, item 5, to the presiding Administrative Law Judge.

8. Miami 35 has indicated that funds for its proposed facility will be provided by aliens. In this regard, we note that Miami 35 has granted an option to Tecnomar, Inc. (Tecnomar) to acquire preferred stock equal to 49 percent of the equity ownership of Miami 35. It is further noted that Miami 35 is prohibited from increasing or transferring any of its authorized shares of voting or nonvoting stock without the prior consent of Tecnomar. Tecnomar is controlled by aliens of their agents. Miami 35 did not file a copy of the option with the Commission and our ability to analyze the terms of the agreement is limited to the brief description provided in the application. Clearly, section 310(b) of the Communications Act would preclude Tecnomar from exercising the option in a manner that would allow Tecnomar to acquire more than a 20 percent direct interest in Miami 35 or more than a 25 percent interest through an intermediate corporation.<sup>3</sup> Furthermore, the option

would appear to give Tecnomar the right presently to restrict the ability of Miami 35 to increase the number of its authorized shares of both voting and nonvoting stock as well to restrict the alienability of such shares. Such investor protection restrictions may not necessarily run afoul of the requirements of section 310 of the Communications Act. See *Data Transmission Co.*, 44 FCC 2d 935. However, in the absence of a copy of the actual option agreement, we can not examine the terms and restrictions in detail and, thereby, make an informed judgment. We will therefore, require Miami 35 to file a copy of the option which it executed with Tecnomar with the presiding Administrative Law Judge within 20 days after the release of this Order. The presiding Administrative Law Judge, after review of the option, may take such action as he deems appropriate.

9. A and I specifies the overall height above ground (AGL) of its tower as 625 feet in Section V-C, item 6, FCC Form 301. However, in Section V-G, the height AGL is listed as 600 feet. Consequently, we cannot determine the correct tower height. Additionally, A and I did not submit a vertical tower sketch as required by Section V-G, item 6. Accordingly, A and I will be required to submit an amendment which clarifies the height AGL of its proposed tower and includes the required vertical tower sketch, to the presiding Administrative Law Judge, within 20 days after this Order is released.

10. Miami Broadcasting, Inc. (Miami Broadcasting) and Spanish Broadcasting Corporation (Spanish Broadcasting) each proposes to mount its antenna on the existing tower of WCIX-TV, Miami, Florida. Miami Broadcasting indicates that the overall height of the WCIX-TV tower above ground level (AGL) is 759 feet, and Spanish Broadcasting's application indicates that the tower height AGL is 1041 feet. Our records show that WCIX-TV is licensed with tower height AGL of 1441.5 feet, and it holds a construction permit to increase its tower height to 1841.5 feet AGL. Miami Broadcasting and Spanish Broadcasting will each be required to submit an amendment which corrects the WCIX-TV tower height AGL, to the presiding Administrative Law Judge, within 20 days after this Order is released.

11. Section II, item 3(a), FCC Form 301 inquires whether the applicant is in compliance with the provisions of section 310 of the Communications Act of 1934, as amended, relating to interests of aliens and foreign governments.

<sup>2</sup> We note that Kilgore notified the Federal Aviation Administration's (FAA) Eastern Regional Office of its proposed construction. Kilgore should submit its proposal to the FAA's Southern Regional Office, if it has not already done so.

<sup>3</sup> Miami 35 states in its application that Tecnomar is "ultimately" controlled by aliens. It is not clear whether direct or indirect control is being referred to by the statement. Section 310(b) refers to capital stock owned of record or voted by aliens. Capital stock includes preferred as well as common stock.



Kilgore's answer indicates that it is not in compliance with section 310. Kilgore will be required to submit an amendment which fully explains its response to item 3(a), to the presiding Administrative Law Judge, within 20 days after this Order is released.

12. Herbert Espino, President, Treasurer, director and 50 percent shareholder of Miami 35 is also an officer, director and shareholder of Dadeland Broadcasting Co., Inc. (Dadeland), an applicant for a construction permit for a new AM station (BP-780905AN) in Miami, Florida. Section 73.3555(b)(2) of the Commission's Rules states that no license for a television broadcast station shall be granted to any party if such party directly or indirectly owns, operates, or controls an AM broadcast station and the grant of such license will result in the Grade A contour of the television station encompassing the entire community of license of the AM station. However, Miami 35 has represented to the Commission that, in the event that it is the successful applicant for Channel 35, Mr. Espino will divest himself of all interest in Dadeland. Accordingly, any grant of a construction permit to Miami 35 will be conditioned upon Mr. Espino's divestiture of all interest in, and connection with, the permittee or licensee of the proposed Miami AM station.

13. Lamar reports, in its November 27, 1984, amendment, that Mr. I. Edward London has acquired a 10 percent non-voting interest in Lamar and that he also has a 12 percent voting interest in S.R. Associates, Inc., the licensee of Station WSUA(AM), Miami Beach, Florida. We cannot determine from the information before us whether Mr. London's interest in the applicant is attributable. In any event, Mr. London has indicated that if Lamar is awarded a construction permit, he will divest himself of his interest in, and connection with S.R. Associates, Inc. prior to the commencement of operation of the station. Accordingly, if Lamar is the successful applicant for Channel 35, the construction permit will be appropriately conditioned.

14. Section II, item 10, FCC Form 301, inquires whether documents, instruments, agreements or understandings for the pledge of stock of a corporate applicant, as security for loans or contractual performance, provide that (a) voting rights will remain with the applicant, even in the event of default on the obligation; (b) in the event of default, there will be either a private or public sale of the stock; and (c) prior to the exercise of stockholder rights by

the purchaser at such sale, the prior consent of the Commission (pursuant to 47 U.S.C. 310(d)) will be obtained. A negative response to this question must be accompanied by an explanation. Telecentro answered negatively to item 10; however, it did not submit the required explanation. Telecentro will be required to submit the explanation in the form of an amendment to the presiding Administrative Law Judge within 20 days after this Order is released.

15. At the time they filed their applications, Miami Latino and Comi-Centre Broadcasting, Inc. (Comi-Centre) were each unable to certify that they were financially qualified to construct and operate their proposed facilities. However, each of these applicants has indicated that certification would be forthcoming. To date we have not received the required certification from Miami Latino or Comi-Centre. Accordingly, each applicant will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the Administrative Law Judge in the manner called for in Section III, Form 301, as to its financial qualifications. If either applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue. *Minority Broadcasters of East St. Louis, Inc.*, BC Docket No. 82-378 (released July 15, 1982).

16. Hernandez, Costa and Associates (Hernandez) is a limited partnership. The general partners have been identified; however, the applicant indicates that the limited partners are to be determined. Section 73.3514(a) of the Commission's Rules requires an applicant to provide all information called for by FCC forms, unless the information is inapplicable. However, in *Attrition of Ownership Interests*, 55 R.R. 2d 1464 (1984), the Commission stated that henceforth limited partnership interests were not attributable for the purpose of the multiple ownership rules, if the applicant certifies that the limited partnership agreement conforms in all relevant respects to the Uniform Limited Partnership Act (ULPA) and shows that the limited partners will "not be involved in any material respect in the management or operation of" the proposed station. *Id.* at 1485. Further, the Commission directed that Form 310, among others, be amended to conform to the new attribution standards. *Id.* at

1493. Although changes in the form have not yet been made, there is now no need to provide information as to the limited partners if Hernandez can submit the necessary certification and showing. If the certification or showing is not appropriate, of course, the limited partners would be considered to have attributable interests, and the necessary information as to them would have to be filed as an amendment. Further, the Commission retained the cross-interest policy as to other attributable media interests in the same area. *Id.* at 1490. Accordingly, Hernandez, upon determining its limited partners, will be required either to state that its limited partners have or will have no other media interests subject to the cross-interest policy or identify the limited partners with such interests, identify the other local media and state the nature or extent of the ownership interest.

17. Francisco J. Hernandez, a general partner in the Hernandez application, is also a stockholder in *The Washington Post (Post)*, a daily newspaper published in Washington, D.C. The *Post* controls the licensee of Station WPLG(TV), Channel 10, Miami, Florida. We do not have sufficient information before us to determine whether Mr. Hernandez's interest in the *Post* constitutes an attributable interest. Accordingly, Hernandez will be required to submit an amendment to its application which identifies the nature and extent of Francisco Hernandez's interest in the *Post*, to the presiding Administrative Law Judge, within 20 days after this Order is released. If it is determined that Mr. Hernandez's interest is attributable, the presiding Administrative Law Judge shall take whatever action is deemed appropriate.

18. Section 73.2080 of the Commission's Rules requires an applicant for a new commercial television station to afford equal employment opportunity to all qualified persons and to refrain from discriminating in employment and related benefits on the basis of race, color, religion, national origin or sex. Pursuant to these requirements, an applicant who proposed to employ at least five full-time station employees must establish a program designed to assure equal employment opportunity for women and minority groups (that is Blacks not of Hispanic origin, Asian or Pacific Islanders, American Indians or Alaska Natives, and Hispanics). Hernandez amended its application on November 14, 1984, to include a "Statement of Equal Employment Opportunity Program." It appears from the statement that only persons of



Hispanic origins may qualify for employment with the proposed station. If this is an accurate characterization of Hernandez's equal employment opportunity program, such a proposal would violate § 73.2080 of the Rules. Accordingly, an issue will be specified to determine whether Hernandez's equal employment opportunity program is consistent with the Rules and, if not, the effect on the applicant's basic qualifications to be a Commission licensee.

19. Manuela Ley is Secretary, director and 24.5 percent stockholder of Spanish Broadcasting. Ms. Ley has no other broadcast interests. However, Evelio Ley, her husband, is the Executive Vice-President and 3 percent stockholder of Miami Telecommunications, Inc. (Telecommunications), the 50 percent owner of the operator of a cable television system serving Miami, Florida.<sup>4</sup> Section 76.501(a)(2) of the Communication's Rules prohibits direct or indirect ownership of both a cable television system and a television broadcast station if the television station would place a Grade B contour over any part of the service area of the cable station. Spanish Broadcasting has, however, represented to the Commission that, if it were the successful applicant for Channel 35, Mr. Ley would divest himself of all interest in, and connection with Telecommunications prior to the commencement of operation of the television station. Accordingly, any grant of a construction permit to Spanish Broadcasting will be appropriately conditioned.

20. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant would serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

21. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent order, upon the following issues:

(1) To determine with respect to each of the applicants, except those listed in

paragraph 3, *supra*, whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

(2) If a final environmental impact statement is issued with respect to Kilgore Broadcasting and Canal 35, Ltd. which concluded that the proposed facilities are likely to have an adverse effect on the quality of the environment.

(a) To determine whether either proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, either application is qualified to construct and operate as proposed.

(3) To determine, with respect to Hernandez, Costa and Associates, whether its proposed equal employment opportunity program is consistent with the requirements of 73.2080 of the Commission's Rules and, if not, the effect on the applicant's basic qualifications to be a station licensee.

(4) To determine which of the proposals would, on a comparative basis, best serve the public interest.

(5) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

22. It is further ordered, That the motions for leave to amend filed by Julio and Silvia Fernandez and Lamar Communications, Inc. are granted, and the amendments filed by Julio and Silvia Fernandez, Lamar Communications, Inc. and First Latin Women Broadcasting, Inc. are accepted; and the amendments filed by A and I Television Ltd. is rejected.

23. It is further ordered, That the petitions to deny and the objections filed against Julio and Silvia Fernandez, Miami 35 Corp. and Telecentro, Inc. are dismissed as moot.

24. It is further ordered, That the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

25. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent noted herein.

26. It is further ordered, That Telecentro, Inc., Range Communications, and Minority Broadcasting Corporation, Inc. shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to the Chief, Television Branch and Chief, Hearing Branch, Mass Media Bureau, within 20 days after this Order is released.

27. It is further ordered, That Miami 35 Corp. shall file a copy of the option agreement made with Tecnomar, Inc., with the presiding Administrative Law Judge, within 20 days after this Order is released.

28. It is further ordered, That Miami 35 Corp. shall submit an amendment which contains its response to FCC Form 301, Section V-C, item 10(e) and a vertical tower sketch as required by Section V-G, item 6, to the presiding Administrative Law Judge, within 20 days after this Order is released.

29. It is further ordered, That A and I Television Ltd. shall submit an amendment which clarifies the overall height above ground of its proposed tower and a vertical tower sketch as required by Section V-G, item 6, FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

30. It is further ordered, That Miami Broadcasting, Inc. and Spanish Broadcasting Corporation shall each submit an amendment which corrects the overall height above ground of its proposed antenna-supporting structure, to the presiding Administrative Law Judge, within 20 days after this Order is released.

31. It is further ordered, That Kilgore Broadcasting shall submit an amendment which explains its answer to Section II, item 3(a), FCC Form 301, to the presiding Administrative Law Judge, within 20 days after this Order is released.

32. It is further ordered, That, in the event that Miami 35 Corp. is the successful applicant for Channel 35, the construction permit will be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Herbert Espino has divested himself of all interest in, and connection with, the licensee or permittee of the proposed AM radio station in Miami, Florida.

33. It is further ordered, That, in the event of a grant of Lamar Communications, Inc.'s application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that I. Edward London has divested himself of all interest in, and connection with, S.R. Associates, Inc., licensee of Station WSUA, Miami Beach, Florida.

34. It is further ordered, That Telecentro, Inc. shall submit its explanation for its negative answer to

<sup>4</sup> The broadcast interests of spouses are each attributable to the other, *Miller and Schroeder*, 36 RR 2d 1089 (1976).



Section II, item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

35. It is further ordered, That Miami Latino Broadcasting Corp. and Comi-Centre Broadcasting, Inc. shall each submit a financial certification in the form required by Section III, FCC Form 301, or advise the Administrative Law Judge that the certification cannot be made, as may be appropriate.

36. It is further ordered, That Hernandez, Costa and Associates shall submit the certification, statement and/or information required by paragraph 16, *supra*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

37. It is further ordered, That Hernandez, Costa and Associates shall submit an amendment which identifies the nature and extent of Francisco Hernandez's interest in *The Washington Post*, to the presiding Administrative Law Judge, within 20 days after this Order is released.

38. It is further ordered, That, in the event of a grant of Spanish Broadcasting Corporation's application, the construction permit shall be conditioned as follows:

Prior to the commencement of operation of the television station authorized herein, permittee shall certify to the Commission that Evelio Ley has divested himself of all interest in, and connection with, Miami Telecommunications, Inc., operator of the cable television system in Miami, Florida.

39. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

40. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4629 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 85-24; File Nos. BPCT-840120KE and BPCT-840628K1]

### Roswell Broadcasting; Hearing Designation Order

In the matter of applications of:

|                                                             |                                              |
|-------------------------------------------------------------|----------------------------------------------|
| Vernice Boozer and P.M. Shanley d/b/a Roswell Broadcasting. | MM Docket No. 85-24; File No. BPCT-840120KE. |
| Susan Harris.                                               | File No. BPCT-840628K1.                      |

For Construction Permit Roswell, New Mexico.

Adopted: January 23, 1985.

Released: February 12, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Vernice Boozer and P.M. Shanley d/b/a Roswell Broadcasting (RB), and Susan Harris (Harris) for authority to construct a new commercial television station on Channel 21, Roswell, New Mexico.

2. Section V-C, Item 10, FCC Form 301, requires that an applicant submit the area and population within its predicted Grade B contour. Harris has not submitted these figures. Consequently, we are unable to determine whether there would be a significant difference in the size of the area and population that each applicant proposes to serve. Harris will be required to submit an amendment showing the required information, within 20 days after this Order is released, to the presiding Administrative Law Judge. The presiding Administrative Law Judge will consider any significant difference in the areas and populations served under the standard comparative issue.

3. The information submitted by RB in response to Section V-C, item 15, FCC Form 301, appears to be incorrect. The tabulations of contour distances in RB's exhibit 2 do not agree with the tabulations obtained when § 73.684 procedures are applied to the antenna heights and power for its proposed facility. For example, at 180°T the height above the radial would be 158 ft, leading to a city grade contour distance of 2.5 miles. However, RB's exhibit 2 would indicate a contour of 3.8 miles.

Accordingly, RB will be required to submit an appropriate amendment to the presiding Administrative Law Judge and a copy to the Hearing Branch, Enforcement Division, within 20 days after this Order is released.

4. Furthermore, because of our concerns (as outlined in paragraph 3 above) with respect to the accuracy of RB's technical data, we cannot determine whether RB's proposal complies with the city-grade coverage requirement of § 73.685(a) of the Commission's Rules. If the data to be submitted demonstrate that city-grade coverage is provided, no further action is required. If, however, the data does not demonstrate that RB would provide the required coverage over all of its principal community, the presiding Administrative Law Judge may specify an issue to determine whether circumstances exist to warrant a waiver of § 73.685(a) of the Rules.

5. RB's proposed tower is to be located 2 miles from the directional array of AM station KBIM, Roswell, New Mexico. Because of the proximity of the applicant's proposed tower to KBIM, any grant of a construction permit to this applicant will be conditioned to ensure that KBIM's radiation pattern is not adversely affected by the construction of the proposed station.

6. RB intends to mount its antenna on the existing tower of AM Station KRSY, Roswell, New Mexico. The Commission's records show the height of that tower as 208 feet AGL (3889 feet AMSL), but the applicant specifies the tower height AGL as 209 feet (3791 feet AMSL). The Commission cannot determine whether the discrepancy is an error by the applicant or whether the applicant proposes to change the tower height. If it is an error, the applicant may file an appropriate amendment; if the applicant proposes to increase the tower height, the presiding officer will take whatever action is appropriate.

7. No determination has been reached that the tower height and location proposed by Harris<sup>1</sup> would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

8. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Harris has not

<sup>1</sup> The Commission is not in receipt of FAA's determination for the tower proposed by Harris.



supplied this data. Accordingly, the applicant will be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

9. Harris proposes to use a directional antenna. Section 73.685(e) of the Commission's Rules limits the maximum-to-minimum ratio of a UHF directional antenna to 15 db. Harris proposes a directional antenna with maximum-to-minimum ratio of 20 db, but no waiver has been requested. Accordingly, an issue regarding this matter will be specified.

10. In Harris' application, the contours drawn in response to Section V-C, Item 10, FCC Form 301 are not consistent with the directional pattern in Section V-C, item 9(a). Harris will be required to submit an amendment correcting the discrepancy to the presiding Administrative Law Judge and to the Hearing Branch, Enforcement Division within 20 days after this Order is released.

11. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

12. Accordingly, it is ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether there is a reasonable possibility that the tower height and location proposed by Susan Harris would constitute a hazard to air navigation.

(2) To determine with respect to Susan Harris whether circumstances exist which would warrant a waiver of § 73.685(e) of the Commission's Rules.

(3) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine, in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

13. It is further ordered, That the Federal Aviation Administration is

made a party respondent to this proceeding with respect to issue 2.

14. It is further ordered, That Vernice Boozer and P.M. Shanley d/b/a Roswell Broadcasting shall submit an amendment correcting the information submitted in responses to Section V-C, item 15, FCC Form 301 (as explained in paragraph 4) to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after this Order is released.

15. It is further ordered, That any grant of a construction permit to Vernice Boozer and P.M. Stanley d/b/a Roswell Broadcasting will be subject to the following condition:

Prior to construction of the tower authorized herein, permittee shall notify AM station KBIM so that, if necessary, the AM station may determine operating power by the indirect method and request temporary authority from the Commission in Washington, DC to operate with parameters at variance in order to maintain monitoring point field strengths within authorized limits. Permittee shall be responsible for the installation and continued maintenance of detuning apparatus necessary to prevent adverse effects upon the radiation pattern of the AM station. Both prior to construction of the tower and subsequent to the installation of all appurtenances thereon, a partial proof of performance, as defined by § 73.154(a) of the Commission's Rules, shall be conducted to establish that the AM array has not been adversely affected and, prior to or simultaneous with the filing of the application for license to cover this permit, the results submitted to the Commission.

16. It is further ordered, That Vernice Boozer and P.M. Shanley d/b/a Roswell Broadcasting shall submit to the presiding Administrative Law Judge within 20 days after the release of this Order the clarification or amendment required by paragraph 8 as to its proposed tower height.

17. It is further ordered That Susan Harris shall submit an amendment stating the area and population with her predicted Grade B Contour, within 20 days after this Order is released, to the presiding Administrative Law Judge.

18. It is further ordered, That Susan Harris shall submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy each to TV Branch, Mass Media Bureau, and Hearing Branch, Enforcement Division, within 20 days after the date of the release of this Order.

19. It is further ordered, That § 1.1317 of the Commission's Rules is waived to the extent indicated herein. Within 20 days of the release of this Order, Susan Harris shall submit an amended environmental narrative statement required by § 1.1311 of the Rules to the presiding Administrative Law Judge with a copy to the Chief, Video Services Division.

20. It is further ordered, That Susan Harris shall submit an amendment correcting the discrepancy in Section V-C, Item 10, FCC Form 301, to the presiding Administrative Law Judge within 20 days after this Order is released.

21. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

22. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-4626 Filed 2-25-85; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations.



Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010637-005.

Title: North Europe-U.S. Atlantic Conference.

Parties:

Atlantic Container Line (G.I.E.)

Dart-ML Limited

Hapag-Lloyd AG

Intercontinental Transport (ICT)

Sea-Land Service, Inc.

Trans Freight Lines, Inc.

United States Lines, Inc.

Compagnie Generale Maritime (CGM)

Synopsis: The proposed amendment would expand the scope of the agreement to include Wallhamn, Sweden. The parties have requested a shortened review period.

Agreement No.: 224-010724

Title: Burns International Harbor Terminal Agreement.

Parties:

Indiana Port Commission (IPC)

Metro Metals Processing, Inc. (Metro)

Synopsis: The IPC will lease to Metro premises located within the Burns International Harbor. The term of the lease will commence upon the determination by the Commission of its effective date, and will run through September 30, 2004 with the option for extension of one ten-year period and four consecutive five-year periods. Metro will occupy the premises for the purpose of the installation and operation of a storage, processing and distribution facility for steel and steel products, and the transportation of the material necessary to such activity. Dockage and wharfage charges will be assessed according to IPC's tariff.

Agreement No.: 221-010725.

Title: San Francisco Terminal Agreement.

Parties:

The Port of San Francisco (Port)

Flota Mercante Grancolumbiana, S.A. (Grancolumbiana)

Synopsis: The agreement provides for the utilization by Grancolumbiana of the Port as its published, regularly scheduled Northern California port of call. In consideration Grancolumbiana will pay to the Port 60 percent of all wharfage and dockage charges instead of 100 percent. All other tariff charges will remain in effect. The term of the agreement is for five years.

By Order of the Federal Maritime Commission.

Dated: February 21, 1985.

Bruce A. Dombrowski,

Assistant Secretary.

[FR Doc. 85-4671 Filed 2-25-85; 8:45 am]

BILLING CODE 4730-01-M

## Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 15 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-007590-041.

Title: United States Atlantic and Gulf/Colombia Conference.

Parties:

Coordinated Caribbean Transport, Inc.

Flota Mercante Grancolumbiana, S.A.

Lykes Bros. Steamship Co., Inc.

United States Lines Inc.

Synopsis: The proposed amendment would expand the scope of the agreement to include all-water service to and from U.S. Pacific Coast ports and intermodal service to and from U.S. inland and coastal points. It would also establish, for voting purposes, two trade areas—U.S. Atlantic and Gulf Coast ports and U.S. Pacific Coast ports.

Agreement No.: 202-010485-002.

Title: United States Atlantic and Gulf Ports/Italy, France and Spain Freight Conference.

Parties:

Compania Transatlantica Espanola, S.A.

Costa Line

Farrell Lines, Inc.

"Italia" Societa' Per Azioni di

Navigazione Sea-Land Service, Inc.

Synopsis: The proposed amendment would change the name of the conference to reflect the inclusion of the U.S. Gulf coast to the scope of the agreement. It would modify voting provisions concerning service contracts and require that consideration of service contracts be restricted to formal conference meetings. It would also restate the agreement to conform with the format requirements of the Commission's regulations.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Assistant Secretary.

Dated: February 21, 1985.

[FR Doc. 85-4612 Filed 2-25-85; 8:45 am]

BILLING CODE 4730-01-M

## FEDERAL RESERVE SYSTEM

### Bank of New Hampshire Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 18, 1985.

**A. Federal Reserve Bank of Boston**  
(Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of New Hampshire Corporation*, Manchester, New Hampshire; to acquire 100 percent of the voting shares of *Stratford National Bank*, Dover, New Hampshire.

**B. Federal Reserve Bank of New York**  
(A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Gateway Bancorp, Inc.*, Staten Island, New York; to become a bank holding company by acquiring 100 percent of the voting shares of *Gateway State Bank*, Staten Island, New York.

**C. Federal Reserve Bank of Richmond**  
(Lloyd W. Bostian, Jr., Vice President)



701 East Byrd Street, Richmond, Virginia 23261:

1. *City Holding Company*, Charleston, West Virginia; to acquire up to 30 percent of the voting shares of Seneca Bancshares, Inc., Fairlea, West Virginia, thereby indirectly acquiring Seneca National Bank, Fairlea, West Virginia.

2. *Logan County Bancshares, Inc.*, Logan, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of the successors by merger to Logan Bank & Trust Company, Logan, West Virginia and Bank of Chapmanville, Chapmanville, West Virginia.

Comments on this application must be received not later than March 12, 1985.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *First Union Bancorp.*, Blairsville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Union County, Blairsville, Georgia.

2. *Greene County Bancshares, Inc.*, Greeneville, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Greene County Bank, Greeneville, Tennessee.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Uncompahgre Bank Holding Company*, Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Montrose State Bank, Montrose, Colorado.

F. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texas Independent Bancshares, Inc.*, Texas City, Texas; to acquire 100 percent of the voting shares of Gulf Shores Bank, Crystal Beach, Texas, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 20, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4582 Filed 2-25-85; 8:45 am]

BILLING CODE 6210-01-M

#### **PNC Financial Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1985.

A. Federal Reserve Bank of Cleveland (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp.*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC—New Jersey Credit Corp., in consumer finance activities including, without limitation, financing of retail automobile sales, in New Jersey from an office located in that state.

B. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Sahara Bancorp, Inc.*, New Brighton, Minnesota; to engage *de novo* in providing data processing and transmission services to depository institutions pursuant to Regulation Y, section 225.25(b)(7).

2. *Sahara Bancorp, Inc.*, New Brighton, Minnesota; to engage *de novo* in providing management consulting services to depository institutions pursuant to Regulation Y, section 225.25(b)(11).

Board of Governors of the Federal Reserve System, February 20, 1985

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4583 Filed 2-25-85; 8:45 am]

BILLING CODE 6210-01-M

#### **GENERAL SERVICES ADMINISTRATION**

[GSA Bulletin FPMR E-208]

#### **Supply and Procurement; Use of GSA Customer Supply Centers**

February 20, 1985.

To: Heads of Federal agencies

Subject: Use of GSA Customer Supply Centers

1. *Purpose.* This bulletin provides general information on eligible Federal activity use of GSA Customer Supply Centers (CSCs) in obtaining common use supplies at the local or retail level.

2. *Expiration date.* This bulletin contains information of a continuing nature and will remain in effect until canceled or superseded.

3. *Background.* The Federal Property Management Regulations (FPMR) require that acquisition of general supply items for mission needs be limited to the lowest cost item which will adequately serve the functional end-use purpose. General Accounting Office and Inspector General audit reports of personal property management practices have emphasized the need for increased attention to the development and administration of these standards for reasons of economy and efficiency. The GSA Office of Federal Supply and Services, as part of its continuing enhancement of support operations, has established a network of Customer Supply Centers (CSCs) to provide cost-effective retail supply support of eligible activities' requirements for common use items. CSCs now serve all areas of the continental U.S., as well as Alaska, Hawaii, and Puerto Rico and will replace the Self-Service Store (SSS) program in FY 1985.

4. *General.* Customer Supply Centers have proven to be a fast, economical, and efficient way of supplying the retail needs of our Federal customers—whether they are in large cities or remote locations. CSC customers are supported through use of a catalog, simplified telephone ordering, and quick shipment of supplies to the ordering activity. With an account established with the respective regional CSC, agencies can place orders by phone or in person, or by mail using a simplified order form. Electronic order placement is now being tested for application at all CSCs. Use of the CSC means that the



customers need not leave their desks to obtain frequently-needed administrative supplies. Phone and walk-in customers receive immediate information on item availability; if an item is temporarily out of stock, the customer is informed of available substitute items. The order is processed and the merchandise selected, packed, and sent on its way via mail or small parcel carrier by the next business day. In emergency situations, the customer may pick up an order at the CSC. The simplified ordering process and the rapid response by the CSC provide an attractive means of fulfilling small quantity, immediate supply requirements. The range of items provided by the CSC is based on the requirements of the local agencies supported. A catalog is prepared by each Center and periodic catalog supplements reflect item additions, deletions, and price changes. Agencies may request stockage of an item currently not in the CSC catalog by completing a request form and submitting it directly to the CSC. Contact the GSA Customer Service Bureau, Retail Services Branch, to establish a CSC account and obtain the CSC Catalog.

5. *Advantages of Customer Supply Centers.* The advantages provided by CSCs are as follows:

a. More efficient than open market or Self-Service Store buying resulting in overall savings to the Federal government.

b. Quick and easy catalog item selection and ordering by telephone or mail.

c. Next business day shipment to the customer.

d. Extensive inventory designed to meet the needs of the customer agencies within the geographic area served by each CSC.

e. Immediate stock availability information via on-line micro-computer.

f. Discount prices based on volume buying.

g. Emergency walk-in and telephone orders placed in the morning can be picked up at the CSC on the same day.

h. Each CSC provides a detailed catalog which lists the items stocked and procedures for use of the CSC.

i. Automated billing bi-weekly (consistent with DOD MILSBILLS).

6. *Obtaining information and assistance.* Agencies should contact the GSA Regional Customer Service Bureau (CSB) and obtain full information on the use of the CSC in their locale. CSB personnel can provide assistance in the establishment of the CSC account, copies of the CSC catalog, and briefings of agency personnel on the use of the CSC in meeting agency local supply

requirements. GSA's Customer Service Bureau locations are listed in attachment A of this bulletin.

7. *Customer agency controls.* The requirements, limitations, and safeguards contained in FPMR 101-28.3—Self Service Stores—are continued in effect. An appropriate level management official authorized to obligate agency funds must sign the request for the establishment of the CSC account. This individual must also establish internal controls to prevent abuse of the customer access code which is assigned to each ordering activity upon approval of the CSC account. It is through the use of this customer access code that orders are accepted within the CSC and for this reason each ordering activity must ensure that their codes are properly protected.

By delegation of the Assistant Administrator.

James J. Grady, Jr.,

Director of Policy and Agency Assistance.

#### Attachment A.—Customer Service Bureau Locations

##### National Capital Region (NCR)

Customer Service Bureau (WFB), 7th & D Street, SW., Washington, DC 20407, COM: (202) 472-5000, FTS: 472-5000

##### Region 1

Customer Service Bureau (1FB), John W. McCormack Post Office & Courthouse, Boston, MA 02109, COM: (617) 223-3186, FTS: 223-3186

##### Region 2

Customer Service Bureau (2FB), 26 Federal Plaza, New York, NY 10278, COM: (212) 264-3930, FTS: 264-3930

##### Region 3

Customer Service Bureau (3FB), Ninth & Market Streets, Philadelphia, PA 19107, COM: (215) 597-7000, FTS: 597-7000

##### Region 4

Customer Service Bureau (4FB), 75 Spring Street, SW., Atlanta, GA 30303, COM: (404) 221-2949, FTS: 242-2949

##### Region 5

Customer Service Bureau (5FB), 230 South Dearborn Street, Chicago, IL 60604, COM: (312) 353-5375, FTS: 353-5375

##### Region 6

Customer Service Bureau (6FB), 1500 East Bannister Road, Kansas City, MO 64131, COM: (816) 928-7908, FTS: 928-7908

##### Region 7

Customer Service Bureau (7FB), 819 Taylor Street, Fort Worth, TX 76102, COM: (817) 334-3692, FTS: 334-3692

##### Region 8

Customer Service Bureau (8FB), Building 41, Denver Federal Center, Denver, CO 80225, COM: (303) 234-2845, FTS: 234-2845

##### Region 9

Customer Service Bureau (9FB), 525 Market Street, San Francisco, CA 94105, COM: (415) 974-9258 FTS: 454-9258

##### Region 10

Customer Service Bureau (10FB), GSA Center, Auburn, WA 98002, COM: (206) 931-7583, FTS: 396-7583

[FR Doc. 85-4645 Filed 2-25-85; 8:45 am]

BILLING CODE 8820-24-M

#### Agency Information Collection Under Review by the Office of Management and Budget; Classified Information Nondisclosure Agreement

AGENCY: Office of Policy and Management Systems, GSA.

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the General Services Administration (GSA) resubmits to the Office of Management and Budget (OMB) a request to review an existing information collection.

ADDRESS: Send comments to Franklin S. Reeder, GSA Desk Office, Room 3235, NEOB, Washington, DC 20503, and to William W. Hiebert, GSA Clearance Officer, General Services Administration (ATRAI), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ethel Theis, Information Security Oversight Office (202-535-7251).

SUPPLEMENTARY INFORMATION: a. *Purpose.* The form serves as a contractual agreement between the U.S. Government and cleared employees and helps to prevent the disclosure of classified information to unauthorized persons.

b. *Annual reporting burden.* This is estimated as follows: Respondents and responses 5200, hours 433.

c. *Obtaining copies of proposal.* Requestor may obtain copies of the proposal from the Directives and Reports Management Branch (ATRAI),



Room 3007, GS Building, Washington, DC 20405, telephone (202-566-0666).

Dated: February 15, 1985.

William W. Heibert,

*Acting Director, Information Management Division.*

[FR Doc. 85-4646 Filed 2-25-85; 8:45 am]

BILLING CODE 6820-BR-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### Asbestos Removal Control Technology Assessment, Test Protocol for Chemical Protective Glove Material Intermanufacturers Performance Variability, Dust Control During Weigh-Out Transfer, and Epidemiologic Studies of Workers Exposed to Nitroglycerin; Open Meetings

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation limited only by the space available:

##### Asbestos Removal Control Technology Assessment

Date: March 13, 1985.

Time: 9:00 a.m. to 11:30 a.m.

Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To peer review a project entitled "Asbestos Removal Control Technology Assessment." This project will evaluate and document the effectiveness of three selected source control technologies: (1) Glove Bags, (2) Local Exhaust Applications, and (3) Source Modification Through Injection Wetting Techniques.

Additional information may be obtained from: Bruce A. Hollett, Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: FTS: 684-4221, Commercial: 513/684-4481.

##### Test Protocol for Chemical Protective Glove Material Intermanufacturers Performance Variability

Date: March 21, 1985.

Time: 9:00 a.m. to 3:00 p.m.

Place: Room S-120, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888.

Purpose: To discuss the research protocol for determining the intermanufacturers performance variability for chemical protective glove material.

Additional information may be obtained from: R. Leroy Mickelsen, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505-2888, Telephones: FTS 923-4339, Commercial: 304/291-4339.

##### Dust Control During Weigh-Out Transfer

Date: March 28, 1985.

Time: 9:00 a.m. to 11:30 a.m.

Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To peer review a project entitled "Dust Control During Weigh-Out Transfer." This project is to determine how and where dust exposures occur during weighing and transfer operations, to develop recommended work practices, work station and ventilation design, and other engineering controls for reducing or eliminating dust exposures generated by manual weigh-out operations, and to evaluate and document existing controls.

Additional information may be obtained from: William A. Heitbrink, Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4221, Commercial: 513/684-4221.

##### Epidemiologic Studies of Workers Exposed to Nitroglycerin

Date: March 29, 1985.

Time: 9:00 a.m.-4:00 p.m.

Place: Conference Room C, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Purpose: To discuss with a peer review committee a protocol for a proposed NIOSH study which will examine the mortality experience of a group of workers exposed to Nitroglycerin compared to a group of nonexposed workers.

Additional information may be obtained from: Leslie Strayner or Michael Thun, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephones: FTS: 684-4481, Commercial: 513/684-4481.

Viewpoints and suggestions from industry, organized labor, academia, other government agencies and the public are invited.

Dated: February 19, 1985.

Elvin R. Hilyer,

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 85-4594 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-19-M

### Food and Drug Administration

[Docket No. 85F-0017]

#### Diversey Wyandotte Corp., Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Diversey Wyandotte Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 9-octadecanoic sulfonate, sodium dimethylbenzene sulfonate, light petroleum hydrocarbon, and hydrogen

peroxide as components in a sanitizing solution for use on food-processing equipment.

**FOR FURTHER INFORMATION CONTACT:** Blondell Anderson, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5740.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5H3846) has been filed by Diversey Wyandotte Corp., 1532 Biddle Ave., Wyandotte, MI 48192, proposing that § 178.1010 *Sanitizing solutions* (21 CFR 178.1010) be amended to provide for the safe use of 9-octadecanoic sulfonate, sodium dimethylbenzene sulfonate, light petroleum hydrocarbon, and hydrogen peroxide as components in a sanitizing solution for use on dairy, beverage, brewing, and food-processing equipment.

The potential environment impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c), (proposed December 11, 1979; 44 FR 71742).

Dated: February 15, 1985.

Richard J. Ronk,

*Acting Director, Center for Food and Safety and Applied Nutrition.*

[FR Doc. 85-4589 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0059]

#### ICI Americas, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that ICI Americas, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the deletion of the temperature limitation on the use of poly(oxy-p-phenylene-sulfonyl-p-phenylene) resin as a component of repeated use food-contact articles.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Brown, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St.



SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3819) has been filed by ICI America, Inc., Wilmington, DE 19897, proposing that § 177.2440

*Polyethersulfone resins* (21 CFR 177.2440) be amended to delete the temperature limitation on the use of poly(oxy-*p*-phenylenesulfonyl-*p*-phenylene) resin as a component of repeated use food-contact articles.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c) [proposed December 11, 1979; 44 FR 71742].

Dated: February 19, 1985.

John M. Taylor,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-4588 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0058]

#### The B.F. Goodrich Co., Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that The B.F. Goodrich Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-2,4,6-(1H,3H,5H)trione as an antioxidant/stabilizer in olefin copolymers.

**FOR FURTHER INFORMATION CONTACT:** Thomas C. Brown, Center for Food Safety and Applied Nutrition (NFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 4B3828) has been filed by The B.F. Goodrich Co., Akron, OH 44318, proposing that the food additive regulations be amended to provide for the safe use of 1,3,5-tris(3,5-di-*tert*-butyl-4-hydroxybenzyl)-*s*-triazine-

2,4,6-(1H,3H,5H)trione as an antioxidant/stabilizer in olefin copolymers complying with 21 CFR 177.1520(c).

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 19, 1985.

John M. Taylor,

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 85-4590 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-01-M

#### Health Resources and Services Administration

##### Advisory Committee; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of March 1985:

Name: National Advisory Council on Health Professions Education.

Date and Time: March 25-26, 1985, 9:00 a.m.

Place: Conference Room I & J, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Closed on March 25, 1985, 9:00 a.m.-5:00 p.m.; March 26, 1985, 9:00 a.m.-12:30 p.m.

Open for the remainder of meeting.

Purpose: The Council advises the Secretary with respect to the administration of programs of financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover: welcome and opening remarks; report of the Administrator, budget update, report on international activities and future agenda items. The meeting will be closed to the public all day on March 25 and on March 26, from 9:00 a.m. to 1:30 p.m. for the review of grant application for Advanced Financial Distress. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5, United States Code, and the

Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write to or contact Mr. Robert L. Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Bureau of Health Professions, Health Resources and Services Administration, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 443-6880.

Agenda items are subject to change as priorities dictate.

Dated: February 20, 1985.

Jackie E. Baum,

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 85-4585 Filed 2-25-85; 8:45 am]

BILLING CODE 4160-15-M

#### DEPARTMENT OF THE INTERIOR

##### Bureau of Land Management

#### Availability and Public Hearings Draft Resource Management Plan/ Environmental Impact Statement; Las Cruces District, NM

**AGENCY:** Bureau of Land Management (BLM), Las Cruces District, White Sands Resource Area, New Mexico.

**ACTION:** Notice availability and public hearings.

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the BLM has prepared a Draft Resource Management Plan/ Environmental Impact Statement (RMP/ EIS) to consider the issues of rangeland management, special management areas, land tenure adjustment, and access on 1.8 million acres of public land in Otero and Sierra Counties in south-central New Mexico.

**DATE:** Written comments on the RMP/ EIS should be sent to the White Sands Resource Area no later than May 29, 1985.

**ADDRESS:** Comments should be sent to: Larry Nunez, Area Manager, 1800 Marquess St., P.O. Box 1420, Las Cruces, New Mexico 88004.

**FOR FURTHER INFORMATION CONTACT:** Willis M. Bird, Jr., RMP/EIS Team Leader (same as above address), telephone: (505) 525-8228 or FTS 571-8353.

**SUPPLEMENTARY INFORMATION:** Copies of the draft RMP/EIS have been distributed to a mailing list of identified



interested parties. A limited number of additional copies are available at the White Sands Resource Area Office, 1800 Marquess Street, P.O. Box 1420, Las Cruces, New Mexico 88004. Public reading copies are available for review at the BLM State Office, U.S. Federal Building, Santa Fe, New Mexico; and at public and university libraries in Las Cruces, Alamogordo, Truth or Consequences, Albuquerque, and Portales, New Mexico; and El Paso, Texas.

**Public Meetings and Hearings:** Public meetings will be held at 10:00 a.m. and public hearings will be held at 1:30 p.m. on the dates and at the locations listed below:

*Tuesday, April 16, 1985*

Alamogordo, New Mexico

Location: New Mexico School for the Visually Handicapped—Media Center, 1900 North White Sands Boulevard

*Wednesday, April 17, 1985*

Truth or Consequences, New Mexico

Location: Convention Center, corner of Daniels and McAdoo

During the public hearings, oral comments on the contents of the Draft RMP/EIS will be limited to 10 minutes and should be accompanied with a written text. Anyone wishing to register for the public hearings to present oral comments should contact Willis M. Bird, Jr., RMP/EIS Team Leader at the White Sands Resource Area Office, phone (505) 525-8228, prior to April 9, 1985.

Monte G. Jordan,

Associate State Director.

February 11, 1985.

[FR Doc. 85-4591 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-FB-M

#### Utah; Filing of Plat of Survey

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah

T. 36 S., R. 5 E.

T. 37 S., R. 5 E.

These plats, in two (2) sheets, represent: (1) The dependent resurvey of a portion of the south boundary and a portion of the subdivisional lines, the survey of a portion of the subdivisional lines and a survey of the subdivision of sections 34 and 35, T. 36 S., R. 5 E., Salt Lake Meridian, Utah; (2) the dependent resurvey of the line between sections 1

and 12, and the completion survey of section 4, and 9 through 15 of T. 37 S., R. 5 W., Salt Lake Meridian, Utah, for Group 660, and were accepted January 4, 1985.

Salt Lake Meridian, Utah

T. 43 S., R. 16 W.

This plat represents the dependent resurvey of a portion of the east boundary (Pine Valley Guide Meridian) and a portion of the subdivisional lines, and the survey of the subdivision of sections 12 and 13, and the survey of the meander lines through section 12 of T. 43 S., R. 16 W., Salt Lake Meridian, Utah, for Group 638, and was accepted February 5, 1985.

Salt Lake Meridian, Utah

T. 12 N., R. 14 W.

This plant represents the dependent resurvey of the Third Standard Parallel North on the south boundary of Township 13 North, Ranges 13 and 14 West, the south boundary, a portion of the east and west boundaries, and portions of the subdivisional lines, and the survey of a portion of the subdivision of sections 1, 3, 10, 16, 17, 19, 22, 23, and 30 of T. 12 N., R. 14 W., Salt Lake Meridian, Utah, for Group 625, and was accepted February 5, 1985.

Salt Lake Meridian, Utah

T. 18 S., R. 4 W.

This plat represents the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, and the survey of the subdivisional of sections 19, 20, 21, 22, 28, and 29 of T. 18 S., R. 4 W., Salt Lake Meridian, Utah, for Group 620, and was accepted January 8, 1985.

Salt Lake Meridian, Utah

T. 2 S., R. 4 E.

T. 40 S., R. 7 W.

These plats, in two (2) sheets, were prepared: (1) to provide designations for areas that have been segregated out by mineral surveys, in section 25, T. 2 S., R. 4 E., Salt Lake Meridian, Utah; and (2) to provide designation to an area in trespass and is based on the plat accepted February 14, 1984, of T. 40 S., R. 7 W., Salt Lake Meridian, Utah, and were accepted February 5, 1985.

Salt Lake Meridian, Utah

*Revised Protraction Diagram No. 2*

This diagram represents the official protraction of the rectangular system of survey and shows area of unsurveyed sections in Townships 4 and 5 N., Ranges 9, 10, 11, 12 and 13 W.; and T. 6 N., R. 12 W., Salt Lake Meridian, Utah, and was accepted October 18, 1984.

These plats and diagram will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

These surveys were executed to meet certain administrative needs of this Bureau.

All inquiries relating to this land should be sent to the Utah State Office, Bureau of Land Management, 324 South State Street #301, Salt Lake City, Utah 84111-2303.

Dated: February 15, 1985.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-4595 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-DQ-M

[U-069117]

#### Utah; Proposed Continuation of Withdrawal

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Reclamation, Lower Colorado Region, proposes that a land withdrawal for the LaVerkin Springs Unit, Colorado River Basin Salinity Control Project, continue for an additional 5 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

**FOR FURTHER INFORMATION CONTACT:** Lillie Hikida, BLM Utah State Office, 324 South State Street #301, Salt Lake City, Utah 84111-2303.

**SUPPLEMENTARY INFORMATION:** The Bureau of Reclamation, Lower Colorado Region, proposes that the existing land withdrawal made by Public Land Order No. 4036 dated June 6, 1966, as amended, be continued for a period of five (5) years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located in the Virgin River Basin approximately 10 miles east of St. George and aggregate 1386.5 acres in Washington County.

The purpose of the withdrawal is to control the salt discharge into the Virgin River. The withdrawal segregates the lands from the operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons



who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: February 19, 1985.

Orval L. Hadley,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-4396 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-DQ-M

#### Intent To Hold Public Scoping Meetings and To Prepare an Environmental Impact Statement for a Coal Preference Right Lease Application (PRLA), Located in the Craig District, CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public scoping and information meetings for preparation of EIS (James Creek Preference Right Lease Application Environmental Impact Statement).

**SUMMARY:** This notice supplements the Notice of Intent published January 4, 1984, and advises the public that the Bureau of Land Management intends to hold another set of scoping and information meetings to gather information and seek assistance in defining the range of uses and concerns for preparation of an Environmental Impact Statement (EIS) and disburse information on potential development for Coal PRLA (C-0126998) located in Rio Blanco County, Colorado, approximately nine miles northeast of Meeker, Colorado. This notice is made in accordance with the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) regulations (40 CFR 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are solicited. Any information or issues

identified in January 1984 to BLM will be considered and need not be resubmitted.

#### FOR FURTHER INFORMATION CONTACT:

Submission of comments: An information packet and PRLA location map will be available upon request from the Craig District Office at the address given below and at the public meetings. The meeting dates and places are as follows:

| Place      | Date          | Time   | Address                                                                                                    |
|------------|---------------|--------|------------------------------------------------------------------------------------------------------------|
| Meeker, CO | Mar. 18, 1985 | 7 p.m. | BLM, White River Resource Office, two (2) miles west of Meeker, CO, at the junction of Highways 13 and 64. |
| Craig, CO  | Mar. 19, 1985 | 7 p.m. | Craig District Office, 455 Emerson, Craig, CO.                                                             |

Oral testimony and submission of written comments will be received at the meetings, or written comments may be mailed to EIS Team Leader, Bureau of Land Management, Craig District Office, 455 Emerson Street, Craig, Colorado 81625. Written comments will be accepted through March 8, 1985.

**SUPPLEMENTARY INFORMATION:** The EIS is intended to evaluate leasing alternatives as well as identifying mitigating measures and special stipulations that the applicant must take into consideration when preparing the PRLA's final showing. Alternatives that have been tentatively identified include the following: (1) No Action, or no development alternative, (2) Applicants Proposed Action (a 10 million ton per year surface mine), and (3) Applicants Proposed Action incorporating BLM Mitigating Measures and Special Stipulations. The purpose of the meetings is to encourage participation from interested persons in defining significant environmental issues and concerns which may result from the issuance of a noncompetitive coal lease. This participation is designed to supplement information gathered in January 1984. Issues and concerns previously identified will be considered. Duplicate information need not be provided.

Oral presentations may be made in lieu of or in addition to any written comments submitted. Each witness will be limited to a maximum of ten minutes of oral presentation. The text of any prepared presentation materials may be given to the BLM representative at the meetings.

Potential issues in the area associated with development of this PRLA include impacts to wildlife and groundwater hydrology. Preparation of the EIS is being conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Part 1500), Federal Coal Management Regulations (43 CFR Part 3430), and other Federal laws and regulations, and Department of the Interior policies and procedures.

Dated: February 8, 1985.

Cecil Roberts,

Acting State Director.

[FR Doc. 85-4648 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-JB-M

#### Folsom Resource Area; Bakersfield, CA District; Public Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of Land Management is in the initial stage of preparing an activity plan for the management of 90 acres of BLM-administered public lands near Ione, California as an Area of Critical Environmental Concern. This isolated parcel is situated in portions of the NW $\frac{1}{4}$ SW $\frac{1}{4}$  of Section 16 and the SE $\frac{1}{4}$  of Section 17 of T. 5 N., R. 10 E., MDM. It is located in Amador County about 5 miles southeast of Ione, within the Folsom Resource Area of the Bakersfield District.

**SUPPLEMENTARY INFORMATION:** The public meeting will allow input from the public on the management of the public land near Ione, California. The major issue to be discussed is the protection of rare Ione Teritary Oxisol soils. Public comments will be used to develop a specific management proposal for the area.

**DATE:** The public meeting will be held at the City Hall building of Ione, California, Number One Main Street, at 7 p.m. on Thursday, March 28, 1985.

**FOR FURTHER INFORMATION CONTACT:** Deane Swickard, Folsom Resource Area Manager, 63 Natoma Street, Folsom, California, 95630; (916) 985-4474.

Dated: February 18, 1985.

D.K. Swickard,

Area Manager.

[FR Doc. 85-4647 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-40-M



**National Park Service****National Register of Historic Places;  
Notification of Pending Nominations**

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 16, 1985. Pursuant to § 60.13 of CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by March 13, 1985.

Carol D. Skull,  
Chief of Registration, National Register.

**FLORIDA****Dade County**

Miami, *Congress Building*, 111 Northeast 2nd Ave.

**Lee County**

Boca Grande, *Journey's End*, Beachfront at 18th St.

**GEORGIA****McIntosh County**

Darien, *Vernon Square-Columbus Square Historic District*, Roughly bounded by Market, Trumbull, Rittenhouse and Ft. King George Dr.

**KENTUCKY****Jefferson County**

Jeffersontown, *Jeffersontown Colored School*, 10400 Shelby St.

Louisville, *Electric Building*, 619 S. 4th Ave.  
Louisville, *German Insurance Bank*, 207 W. Market St.

Louisville, *Stuart Building*, 601 W. Oak St.  
Louisville, *Sunnyside*, 3020 Poppy Way  
Louisville, *Temple Bodley Summer House*, Off Riva Ridge Rd. SW of Palatka Rd.

**LOUISIANA****Orleans Parish**

New Orleans, *Saenger Theater (Boundary Increase)*, 1101-111 Canal St.

**MARYLAND****Baltimore County**

Baltimore vicinity, *Tyrconnell*, 120 Woodbrook Lane.

Woodlawn vicinity, *St. Mary's Episcopal Church/Woodlawn*, 5610 Dogwood Rd.

**Charles County**

Bryantown, *Bryantown Historic District*, MD 5 and County Rt. 232

**MINNESOTA****Meeker County**

Dassel, *West End Elevator*, 4th St. and Atlantic Ave.

**MISSISSIPPI****Lownes County**

Columbus, *Sykes-Leigh House*, 719-7th St. North

**MISSOURI****St. Louis (Independent City)**

*American Theater*, 416 N. 9th St.

**NEW YORK****Yates County**

Penn Yan, *Penn Yan Historic District*, Roughly bounded by Water, Seneca, Elm, Wagener, Court, Clinton, North and Main Sts.

**OHIO****Hancock County**

Findlay, *Jones, Elijah Pelton, House*, 313 East Sandusky St.

**Montgomery County**

Dayton, *Lindsey Building*, 25 S. Main St.

**Pickaway County**

Groveport vicinity, *Perrill-Goodman Farm House*, Rt. 1, Box 106

**Wood County**

Perrysburg, *Yeager, John J., House*, 343 W. Indiana Ave.

**OKLAHOMA****Kiowa County**

Snyder, *Snyder Frisco Depot*, 500 E. St.

**TEXAS****Dallas County**

Cedar Hill, *Angle, D. M., House (Cedar Hill Texas MRA)*, 600 Beltline

Cedar Hill, *Bryant, Jr., William, House (Cedar Hill Texas MRA)*, S. Broad and Cooper

Cedar Hill, *Hawkes, Z. T. (Tip), House (Cedar Hill Texas MRA)*, 132 N. Potter St.

Cedar Hill, *Roberts, Dr. Rufus A., House (Cedar Hill Texas MRA)*, 210 S. Broad St.

Cedar Hill, *Straus House (Cedar Hill Texas MRA)*, 400 Cedar

**UTAH****Beaver County**

Minersville, *Minersville City Hall (Public Works Buildings TR)*, 600 W. Main St.

**Box Elder County**

Brigham City, *Box Elder High School Gymnasium (Public Works Buildings TR)*, 18 N. 400 East

Garland, *Bear River High School Science Building (Public Works Buildings TR)*, 1450 S. Main St.

**Cache County**

Benson, *Benson Elementary School (Public Works Buildings TR)*, 3440 N. 3000 West

Lewiston, *Lewiston Community Building (Public Works Buildings TR)*, 29 S. Main St.

Logan, *Home Economics/Commons Building (Public Works Buildings TR)*, Off US 89, Utah State University

Logan, *Logan Fish Hatchery Caretaker's Residence (Public Works Buildings TR)*, 1469 W. 200 North

Logan, *Logan High School Gymnasium (Public Works Buildings TR)*, 162 W. 100 South

Logan, *Logan Municipal Slaughterhouse (Public Works Buildings TR)*, 265 N. 600 West

Mendon, *Mendon Elementary School (Public Works Buildings TR)*, Off UT 23

**Carbon County**

Helper, *Helper Junior High School (Public Works Buildings TR)*, 145 S. Uintah

**Davis County**

Farmington, *Farmington Tithing Office (Tithing Offices and Granaries of the Mormon Church TR)*, 108 N. Main St.

**Emery County**

Castle Dale, *Castle Dale High School Shop (Public Works Buildings TR)*, 300 N. Center St.

**Garfield County**

Boulder, *Boulder Elementary School (Public Works Buildings TR)*, Off UT 51

**Iron County**

Modena, *Modena Elementary School (Public Works Buildings TR)*, Off UT 56

**Kane County**

Orderville, *Valley School (Public Works Buildings TR)*, Off US 69

**Millard County**

Fillmore, *Millard High School Gymnasium (Public Works Buildings TR)*, 35 N. 200 West

Hinckley, *Hinckley High School Gymnasium (Public Works Buildings TR)*, Off US 5/50

**Salt Lake County**

Salt Lake City, *Seismograph Building (Public Works Buildings TR)*, University of Utah  
Sandy, *Jordan School District Administration Building (Public Works Buildings TR)*, 9361 W. 400 East

**Sanpete County**

Manti, *Sanpete County Courthouse (Public Works Buildings TR)*, 160 N. Main St.

Moroni, *Moroni High School Mechanical Arts Building (Public Works Buildings TR)*, 350 N. Center St.

Mount Pleasant, *Mount Pleasant High School Mechanical Arts Building (Public Works Buildings TR)*, 150 N. State St.

**Sevier County**

Monroe, *Monroe City Hall (Public Works Buildings TR)*, 10 N. Main St.

**Summit County**

Park City, *Marsac Elementary School (Public Works Buildings TR)*, 431 Marsac

**Utah County**

Camp W. G. Williams, *Camp Williams Hostess House/Officers' Club (Public Works Buildings TR)*, Off UT 68

Santaquin, *Santaquin Junior High School (Public Works Buildings TR)*, 75 W. 100 South



Spanish Fork, *Spanish Fork Fire Station* (Public Works Buildings TR), 365 N. Main St.

Spanish, *Spanish Fork High School Gymnasium* (Public Works Buildings TR), 300 S. Main St.

#### Washington County

St. George, *St. George Elementary School* (Public Works Buildings TR), 120 S. 100 West

#### Wayne County

Bicknell, *Wayne County High School* (Public Works Buildings TR), 55 N. Center St.

Loa, *Loa Tithing Office* (Tithing Offices and Granaries of the Mormon Church TR), 100 West and Center St.

Teasdale, *Teasdale Tithing Granary* (Tithing Offices and Granaries of the Mormon Church TR), Off UT 117

#### Weber County

North Ogden, *North Ogden Elementary School* (Public Works Buildings TR), 474 E. 2650 North

Ogden, *El Monte Golf Course Clubhouse* (Public Works Buildings TR), 1300 Valley Dr.

Ogden, *Utah School for the Deaf and Blind Boys' Dormitory* (Public Works Buildings TR), 846 20th St.

#### VERMONT

##### Orange County

Randolph, *Kimball Public Library*, 67 Main St.

#### VIRGINIA

##### Dinwiddie County

Carson vicinity, *Conover Archaeological Site*.

##### Grady County

Chickasha, *Rock Island Depot*, Chickasha Ave.

##### Mecklenburg County

Castle Heights vicinity, *Elm Hill Archaeological Site*.

##### Staunton (Independent City)

Western State Hospital/Old Site Antebellum Complex (Boundary Increase), 301 Greenville Ave.

#### WISCONSIN

##### Dane County

Madison, *Agricultural Heating Station*, 1535 Observatory Dr., Univ. of WI

Madison, *Agriculture Hall*, 1450 Linden Dr., Univ. of WI

Madison, *Commons, John R., House*, 1645 Norman Way

Madison, *Hiram Smith Hall and Annex*, 1545 Observatory Dr., Univ. of WI

Madison, *Horticulture and Agricultural Physics and Soil Science Building*, 1525 Observatory Dr., Univ. of WI

Madison, *Washburn Observatory and Observatory Director's Residence*, 1401 and 1225 Observatory Dr., Univ. of WI

McFarland, *Siggelkow Park Mound Group* (47-Do-504), Siggelkow Rd.

Stoughton, *Naeset, Jens, House*, 126 E.

Washington

#### Grant County

Cassville vicinity, *Stonefield* (Boundary Decrease), Hwy VV, Nelson Dewey State Park

Platteville, *Agriculture and Manual Arts Building/Platteville State Normal School*, Univ. of WI, Platteville

#### La Crosse County

La Crosse, *Main Hall/La Crosse State Normal School*, 1724 State St., Univ. of WI, La Crosse

[FR Doc. 85-4655 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-70-M

#### Alaska Region; Subsistence Resource Commission Meeting

**SUMMARY:** The Alaska Region of the National Park Service announces a forthcoming meeting of the Gates of the Arctic National Park Subsistence Resource Commission.

**DATE:** The meeting will be held starting at 9:00 A.M. on Friday, March 8, 1985, and ending Saturday afternoon, March 9, 1985.

**Location:** Shungnak School, Shungnak Alaska.

#### Agenda:

The following agenda items will be undertaken:

1. Call to order.
2. Roll call.
3. Introduction of visitors and guests.
4. Minutes.
5. Old business.
  - a. Agency reports.
  - b. Approval of by-laws.
  - c. Committee assignments.
  - d. Research needs.
  - e. Village concerns.
6. New business.
7. Meeting schedule.
8. Adjournment.

Written comments and recommendations received prior to March 6, 1985, will be considered at the meeting. All comments should be addressed to: Chairman, Gates of the Arctic National Park, Subsistence Resource Commission, c/o Box 74680, Fairbanks, Alaska 99707.

**FOR FURTHER INFORMATION CONTACT:** Richard G. Ring, Superintendent, Gates of the Arctic National Park and Preserve, P.O. Box 74680, Fairbanks, Alaska 99707. Phone (907) 456-0281.

**SUPPLEMENTARY INFORMATION:** The Subsistence Resource Commissions are authorized under Title VIII, Section 808,

of the Alaska National Interest Lands Conservation Act Public Law 96-487.

Robert L. Peterson,

Acting Regional Director Alaska Region.

[FR Doc. 85-4656 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-70-M

#### Office of Surface Mining Reclamation and Enforcement

[Federal Coal Leases W-0271199, W-0271200, and W-0271201]

#### Intent To Prepare a Draft Environmental Impact Statement and To Hold a Public Scoping Meeting for the Proposed Dry Fork Mine, Campbell County, WY

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Notice of intent to prepare a draft environmental impact statement and to hold a public scoping meeting.

**SUMMARY:** Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM), Western Technical Center, intends to prepare a draft environmental impact statement (EIS) on the permit application submitted by the Phillips Coal Company to OSM and the State of Wyoming for the proposed Dry Fork mine. The EIS will evaluate the three alternative actions (approval, approval with additional mitigation measures, or disapproval) the Department of the Interior could take on this application; it will assist the Department in making a decision on Phillips Coal Company's application for surface mining of coal north of the city of Gillette, Wyoming.

**DATES:** A public meeting on the scope of the EIS for the proposed mine will be held on March 13, 1985, at the Campbell County Recreation Center, 1000 Douglas Highway, Gillette, Wyoming, beginning at 7 p.m., MST. The public is invited to participate at this meeting or to submit written comments during the scoping period. OSM is asking the public to identify significant issues that relate to the proposed mine and that should be analyzed in depth in the EIS. Individual comments at the meeting will be limited to 10 minutes. Filing of a written statement at the time of giving oral comments would be helpful and would ensure that each comment is given proper consideration. Written comments or statements on the scope of the EIS must be received no later than 4 p.m., MST, March 28, at the Denver, Colorado, location given under "ADDRESSES."

**ADDRESSES:** Written comments or statements must be mailed or hand



delivered to Allen D. Klein, Administrator, Attn: Charles Albercht, OSM, Western Technical Center, Second Floor, Brooks Towers, 1020 Fifteenth Street, Denver, Colorado 80202.

The permit application submitted by Phillips Coal Company is available for public review during normal working hours at OSM, Western Technical Center, Brooks Towers, Second Floor, 1020 15th Street, Denver, Colorado; the OSM Casper Field Office, 935 Pendell Boulevard, Mills, Wyoming; the Wyoming Department of Environmental Quality (DEQ), Herschler Building, Third Floor, 122 West 25th, Cheyenne, Wyoming; and the County Clerk's Office, Campbell County, Gillette, Wyoming.

**FOR FURTHER INFORMATION CONTACT:** Charles Albercht, Chief, Environmental Analysis Branch (telephone: 303-844-5656), at the Denver, Colorado, location given under "ADDRESSES."

**SUPPLEMENTARY INFORMATION:** The proposed surface coal mine would be located approximately 4 miles north of Gillette, Wyoming. The mine would cover approximately 3,799 acres of State and private surface; it would be in operation for about 34 years, with a maximum annual production of 15 million tons of coal.

The EIS, prepared by OSM, will present both alternative actions that the Department and the State of Wyoming could take on the permit application and the environmental impacts of implementing each of these alternative actions. The major alternative actions thus far identified for consideration are approval of the permit application with design modification and/or necessary stipulations to meet the requirements of the Surface Mining Control and Reclamation Act, the Wyoming Environmental Quality Act, and regulations pursuant to these acts; approval of the permit application with additional mitigation measures; and disapproval of the permit application.

The EIS will include (1) a site-specific analysis of the proposed Dry Fork coal mine as it would affect the permit area, adjacent areas, and regional areas and (2) a cumulative analysis of the six existing mines (Shell Oil Company, Bucksmin mine; Carter Mining Company, Inc., Rawhide mine; Amax Coal Company, Eagle Butte mine; Kerr-McGee Coal Corporation, Clovis Point mine; Fort Union Coal Company, Fort Union mine; and Wyodak Resources, Wyodak mine) and three proposed mines (Carter Mining Company, Inc., South Rawhide mine; Kerr-McGee Coal Corporation, East Gillette mine; and

Phillips Coal Company, Dry Fork mine) currently operating or proposed for operation in the vicinity of the proposed permit area. Although, these nine mines cover or would cover about 30,500 acres in a strip 7 miles wide and 12 miles long.

Dated: February 20, 1985.

**Brent Wahlquist,**

*Assistant Director, Technical Services and Research.*

[FR Doc. 85-4650 Filed 2-25-85; 8:45 am]

BILLING CODE 4310-05-M

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 435, Park Square Building, 31 St. James Avenue, Boston, Massachusetts on March 25 and 26, 1985, beginning at 8:30 a.m. each day.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in Title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) has been made that the subject of the meeting falls within the exceptions to the open meeting requirement set forth in Title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: February 20, 1985.

**Leslie S. Shapiro,**

*Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 85-4618 Filed 2-25-85; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF JUSTICE

[AAG/A Order No. 22-84]

### Privacy Act of 1974; Notice of New System of Records

Pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(e) (4) and (11), the Department of Justice, Federal Bureau of Investigation (FBI), is publishing the following system of records: National Center for the Analysis of Violent Crime (NCAVC).

Section 552a(o) of Title 5, United States Code, requires 60 days' advance notice to the Congress and to the Office

of Management and Budget (OMB) of any proposal to establish a new system of records. Therefore, a report on this proposed system has been filed with the Director of OMB, the President of the Senate, and the Speaker of the House of Representatives. Congress, OMB, and the public may address any comments to Thomas F. O'Leary, Assistant Director, Administrative Services Staff, Justice Management Division, Room 6314, Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530. Comments must be submitted on or before April 29, 1985.

Dated: December 10, 1984.

**Anthony C. Liotta,**

*Assistant Attorney General for Administration.*

### JUSTICE/FBI-015

#### SYSTEM NAME:

National Center for the Analysis of Violent Crime (NCAVC).

#### SYSTEM LOCATION:

Federal Bureau of Investigation, Training Division, FBI Academy, Behavioral Science Unit, Quantico, Virginia 22135.

#### CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Individuals who relate in any manner to official FBI investigations into violent crimes including, but not limited to, suspects, victims, witnesses, close relatives, medical personnel, and associates who are relevant to an investigation.

B. Individuals who are the subject of unsolicited information or who offer unsolicited information, and law enforcement personnel who request assistance and/or make inquiries concerning records.

C. Individuals who are the subject of violent crime research studies including, but not limited to, criminal personality profiles, scholarly journals, and news media references.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

The National Center for the Analysis of Violent Crime will maintain in both manual and automated formats case investigation reports on all forms of solved and unsolved violent crimes. These violent crimes include, but are not limited to, acts or attempted acts of murder, kidnapping, incendiary arson or bombing, rape, physical torture, sexual trauma, or evidence of violent forms of death.

A. Violent Criminal Apprehension Program (VICAP) case reports submitted to the FBI by a duly constituted Federal, State, county, or municipal law



enforcement agency in any violent criminal matter. VICAP reports include, but are not limited to, crime scene descriptions, victim and offender descriptive data, laboratory reports, criminal history records, court records, news media references, crime scene photographs, and statements.

B. Violent crime case reports submitted by FBI headquarters or field offices.

C. Violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references of interest to NCAVC personnel.

D. An index of all detected trends, patterns, profiles and methods of operation of known and unknown violent criminals whose records are maintained in the system.

E. An index of the names, addresses, and contact telephone numbers of professional individuals and organizations who are in a position to furnish assistance to the FBI's NCAVC operation.

F. An index of public record sources for historical, statistical and demographic data collected by the U.S. Bureau of the Census.

G. An alphabetical name index pertaining to all individuals whose records are maintained in the system.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

44 U.S.C., Section 3101; 41 CFR Subpart 101-11.2 and 28 U.S.C., Section 534.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

As currently envisioned, the NCAVC will be administered by the FBI through its Training Division's Behavioral Science Unit located at the FBI Academy, Quantico, Virginia. Its primary mission is to consolidate research, training, and operational support activities for the express purpose of providing expertise to any legitimate law enforcement agency confronted with unusual, bizarre, and/or particularly vicious or repetitive violent crimes.

Records described above are maintained in this system to permit the FBI to function efficiently as an authorized, responsive component of the Department of Justice. Therefore, the information in this system is disclosed to officials and employees of the Department of Justice, and/or all components thereof, who need the information to perform their official duties.

Information in this system may be disclosed as a routine use to any Federal, State, local, or foreign government agency directly engaged in the criminal justice process where access is directly related to a law enforcement function of the recipient agency in connection with the tracking, identification, and apprehension of persons believed to be engaged in repeated or exceptionally violent acts of criminal behavior.

Information in this system may be disclosed as a routine use to an organization or individual in both the public or private sector pursuant to an appropriate legal proceeding or, if deemed necessary, to elicit information or cooperation from the recipient for use by the FBI in the performance of an authorized activity. An example could be where the activities of an individual are disclosed to a member of the public to elicit his/her assistance in FBI apprehension or detection efforts.

Information in this system may be disclosed as a routine use to an organization or individual in the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy and to the extent the information is relevant to the protection of life or property.

Relevant information may be disclosed from this system to the news media and general public where there exists a legitimate public interest. Examples would include: to obtain public or media assistance in the tracking, identifying, and apprehending of persons believed to be engaged in repeated acts of violent criminal behavior; to notify the public and/or media of arrests; to protect the public from imminent threat to life or property where necessary; and to disseminate information to the public and/or media to obtain cooperation with violent crime research, evaluation, and statistical programs.

Information in this system may be disclosed as is necessary to appropriately respond to congressional inquiries on behalf of constituents.

A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906 to the extent that legislation governing the record permits.

#### POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

##### STORAGE:

Information in the system is stored manually in locked file cabinets, either in its natural state or on microfilm, at the NCAVC in Quantico, Virginia. The active main files are maintained in hard copy form and some inactive records are maintained on microfilm.

In addition, some of the information is stored in computerized data storage devices at the NCAVC and FBI Computer Center in Washington, D.C. Investigative information which is maintained in computerized form may be stored in memory, on disk storage, on computer tape, or on computer printed listings.

##### RETRIEVABILITY:

On-line computer access to NCAVC files is achieved by using the following search descriptors:

A. A data base which contains the names of individuals, their birth dates, physical descriptions, and other identification numbers such as FBI numbers, if such have been assigned.

B. Summary variables contained on VICAP reports submitted to the NCAVC as previously described.

C. Key words citations to violent crime research studies, scholarly journal articles, textbooks, training materials, and news media references.

##### SAFEGUARDS:

Records are maintained in restricted areas and are accessed only by FBI employees. All FBI employees receive a complete pre-employment background investigation. All employees are cautioned about divulging confidential information or any information contained in FBI files. Failure to abide by this provision violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a ten thousand dollar fine or 10 years' imprisonment or both. Employees who resign or retire are also cautioned about divulging information acquired in the job.

Registered mail is used to transmit routine hard copy records between field offices. Highly classified records are hand carried by Special Agents or personnel of the Armed Forces Courier Service. Highly classified or sensitive privacy information, which is electronically transmitted between field offices and to and from FBI Headquarters, is transmitted in encrypted form to prevent interception and interpretation.



Information transmitted in teletype form between the NCAVC in Quantico, Virginia and the FBI Computer Center in Washington, D.C., is encrypted prior to transmission at both places to ensure confidentiality and security of the data.

FBI field offices involved in certain complicated, investigative matters may be provided with on-line access to the computerized information which is maintained for them on disc storage in the FBI Computer Center in Washington, D.C. This computerized data is also transmitted in encrypted form.

#### RETENTION AND DISPOSAL:

All FBI records destruction programs relevant to this system were suspended as a result of a court order, issued January 10, 1980, in the U.S. District Court for the District of Columbia, enjoining the FBI from destroying or otherwise disposing of any FBI records until such time as detailed records retention plans and schedules are developed by NARS and the FBI, and are submitted to and approved by the Court. With the exception of certain limited record categories, this court order prohibits records destruction at both FBI Headquarters and FBI field offices.

As the result of an extensive review of FBI records conducted by NARS, records evaluated as historical and permanent will be transferred to the National Archives after established retention periods and administrative needs of the FBI have elapsed. As deemed necessary, certain records may be subject to restricted examination and usage, as provided by 44 U.S.C. Section 2104.

#### SYSTEM MANAGER(S) AND ADDRESS:

Director, Federal Bureau of Investigation, 10th and Pennsylvania Avenue, NW., Washington, D.C. 20535.

#### NOTIFICATION PROCEDURE:

Address inquiries to the System Manager.

#### RECORDS ACCESS PROCEDURES:

Requests for access to records in this system shall be made in writing with the envelope and the letter clearly marked "Privacy Access Request." The request must provide the full name, complete address, date of birth, place of birth, and notarized signature of the individual who is the subject of the record requested. The request should also include the general subject matter of the document or its file number—along with any other known information which may assist in making a search of the records. The request must also provide a return address for transmitting the information. Access requests should be addressed to

the Director, Federal Bureau of Investigation, Washington, D.C. 20535.

#### CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should also direct their request to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The request should state clearly and concisely (1) the reasons for contesting the information, and (2) the proposed amendment to the information.

#### RECORD SOURCE CATEGORIES:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and ensure the internal security of the United States, collects information from a wide variety of sources. Basically, information is obtained, as a result of investigative efforts, from other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

#### SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3), (d), (e)(1), (e)(4) (G) and (H), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j) (2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and are being published in the proposed rules section of today's Federal Register.

[FR Doc. 85-4584 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-02-M

#### Drug Enforcement Administration

##### Richard B. Lynch Jr., D.O.; Denial of Application

On December 10, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Richard B. Lynch, Jr., D.O., 10 Presidential Blvd., Bala Cynwyd, Pennsylvania 19004, seeking to deny the application for registration executed by the doctor on June 15, 1984. The statutory predicate for the Order to Show Cause under 21 U.S.C. 824(a)(3) was the revocation by the Pennsylvania State Board of Osteopathic Medical Examiners of Dr. Lynch's license to practice osteopathic medicine, effective May 8, 1983. The Order to Show Cause also cited as additional grounds for denial under 21 U.S.C. 824(a)(1) and 824(a)(2) the indication by Dr. Lynch on his application that he was authorized to handle controlled substances in the State of Pennsylvania, when in fact he

was not; and the conviction of Dr. Lynch in Philadelphia Municipal Court of eleven felony counts of illegal dispensing of controlled substances. Two responses to the Order to Show Cause were received from Dr. Lynch. One response was received on December 17, 1984, and another one on January 16, 1985. In addition, a letter from counsel for Dr. Lynch was received on January 24, 1985. Dr. Lynch's first response consisted of a copy of the Order to Show Cause and a copy of a document titled Petition for Allowance of Appeal, apparently filed with the Supreme Court of Pennsylvania, Eastern District on December 5, 1984. Dr. Lynch's second response dated January 9, 1985, consisted of a pre-printed prescription pad upon which was written, "Request for Hearing Based upon my Appeal." In response to the brief request for hearing, the Hearing Clerk for the Administrative Law Judge sent Dr. Lynch a letter dated January 22, 1985, requesting that he submit his request for a hearing in the format prescribed by the Code of Federal Regulations, and providing him copies of the applicable regulations. Dr. Lynch has not responded to this letter. However, a letter, dated January 15, 1985, was received from an attorney representing Dr. Lynch. This letter specifically waived Dr. Lynch's opportunity for a hearing pursuant to 21 CFR 1301.54(c) and provided additional information which the Administrator has considered. Subsequent contact with Dr. Lynch's counsel by Government counsel confirmed Dr. Lynch's desire to waive the hearing. The Administrator therefore finds, pursuant to 21 CFR 1301.54(e), that Dr. Lynch has waived his opportunity for a hearing. Accordingly, the Administrator of the Drug Enforcement Administration enters this final order on the record as it appears.

The Administrator finds that the Pennsylvania State Board of Osteopathic Medical Examiners revoked Dr. Lynch's license to practice osteopathic medicine on April 8, 1983. The order became effective on May 8, 1983. The action of the Board was based on Dr. Lynch's conviction of felonies related to the practice of osteopathic medicine and his unprofessional conduct in failing to conform to standards of acceptable and prevailing osteopathic medical practice. Acts cited by the Osteopathic Board were those which led to Dr. Lynch's felony conviction; namely, the prescribing and dispensing of Valium, Desoxyn, amphetamine and Quaalude, all controlled substances, to three undercover police officers. The Board noted in its order that Dr. Lynch performed no physical examinations,



took no medical histories, and gave no instructions concerning the use of the controlled substances that he prescribed and dispensed. Even after one officer informed him that he was selling the drugs, Dr. Lynch continued to prescribe and dispense them. During his hearing before the Board Dr. Lynch admitted to the use of drugs and alcohol. The Administrator agrees with the Osteopathic Board's finding that Dr. Lynch "misused his access to dangerous drugs afforded to him under color of his title as an osteopathic medical physician to exacerbate our society's very real problem with drug abuse." Dr. Lynch is without authority to possess, dispense, order or prescribe controlled substances in the Commonwealth of Pennsylvania. The Administrator has consistently held that a practitioner cannot be registered under 21 U.S.C. 823 if he lacks state authorization to handle controlled substances. See: *Harry Roodin, M.D.*, Docket No. 83-34, 49 FR 6598 (1983); *Leonard F. Faymore, D.O.*, Docket No. 82-1, 48 FR 32886 (1983); *Jess B. Caderao, M.D.*, Docket No. 81-15, 46 FR 50886 (1981). Counsel for Dr. Lynch advised the Administrator that the doctor is currently appealing the action of the Pennsylvania State Board of Osteopathic Medical Examiners revoking his license to practice osteopathic medicine to the Pennsylvania Supreme Court. The Administrator finds that the doctor's licenses has been revoked since May 8, 1983. He has not been authorized to practice medicine since that date, therefore he has not been authorized to obtain a registration with the Drug Enforcement Administration. The fact that the revocation is being appealed does not stay the effect of the state licensing board revocation.

The Administrator feels obligated to note that in addition to his felony conviction in the Philadelphia Municipal Court and the action of the Osteopathic Board, Dr. Lynch falsified his application for registration with the Drug Enforcement Administration by representing that he was licensed by the State of Pennsylvania to prescribe, administer and dispense controlled substances, and providing the license number which had been revoked in May, 1983. The application was dated June 15, 1984, and signed by Dr. Lynch. Although Dr. Lynch has appealed the revocation, certification from the Pennsylvania Board of Osteopathic Examiners dated September 25, 1984, states that Dr. Lynch's license to practice osteopathic medicine was revoked on May 8, 1983, and that the

revocation has remained in effect from that date.

The Administrator finds that Dr. Lynch has materially falsified an application for registration under the Controlled Substances Act, 21 U.S.C. 824(a)(1); has been convicted of felony offenses relating to controlled substances, 21 U.S.C. 824(a)(2); and has had his state license revoked by competent state authority and is no longer authorized under state law to engage in the dispensing of controlled substances, 21 U.S.C. 824(a)(3). The Administrator concludes that there are three independent statutory grounds for denial of the subject application.

In consideration of the foregoing, the Administrator has decided that Dr. Lynch's application for a DEA Certificate of Registration must be denied. Accordingly, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), the Administrator hereby order that the application for registration executed by Dr. Lynch on June 15, 1984, and any other outstanding applications for registration be, and they hereby are, denied.

Dated: February 20, 1985.

Francis M. Mullen, Jr.,  
Administrator.

[FR Doc. 85-4639 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-09-M

## National Institute of Justice

### Research Grants; Solicitations

The National Institute of Justice is soliciting proposals for applied research grants in the following areas:

#### Programs and Due Dates (1985)

- Crime Control Theory and Policy—May 15
- Drugs, Alcohol and Crime—May 22
- Violent Criminal Behavior—June 5
- Classification, Prediction, Methodology Development—June 12

Multiple awards are planned in each area. Descriptions of the programs and the application processes may be obtained from the National Criminal Justice Reference Service. Interested organizations should write to: NCJRS, P.O. Box 6000, Rockville, Maryland 20850. ATTN: Program Solicitations.

James K. Stewart,

Director.

[FR Doc. 85-4579 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-18-M

## Office of Juvenile Justice and Delinquency Prevention

### Missing Children's Advisory Board; Meeting

The first meeting of the Missing Children's Advisory Board will be held in Washington, D.C., on March 9, 1985. The meeting will take place at The Governor's House, Rhode Island Avenue at 17th Street, N.W., from 9:00 a.m. to 5:30 p.m. The public is welcome to attend.

The Board will discuss its organization and activities as well as its advisory role.

For further information, please contact Michelle Easton, Office of Juvenile Justice and Delinquency Prevention, 833 Indiana Avenue NW, Washington, DC 20531, (202) 724-7855.

Dated: February 15, 1985.

Alfred S. Regnery,  
Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 85-4580 Filed 2-25-85; 8:45 am]

BILLING CODE 4410-18-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Forms Under Review by the Office of Management and Budget (OMB)

#### Background

The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

#### List of Forms Under Review

On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Department Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The OMB and Agency form numbers, if applicable.

How often the form must be filled out.



Who will be required to or asked to report.

Whether small businesses or organizations are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

#### Comments and Questions

Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202-523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room 8-5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202-395-6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

#### Extension

Employment Standards Administration Agreement and Undertaking 1215-0034; OWCP-1

On occasion

Businesses or other for-profit  
300 responses; 75 hours; 1 form

The Agreement and Undertaking form (OWCP-1) is used by coal mine and longshore self-insurers to authorize the OWCP to sell part or all of securities that have been pledged by the companies to pay benefits in the event of a default by the self-insurer.

#### Worker Information

1215-0145; WH-516, WH-516a, WH-516b

On occasion

Individuals or households; Farms;  
Businesses or other for-profit; Small  
businesses or organizations  
25,000 responses; 12,500 hours; 3 forms

The Migrant and Seasonal Agricultural Worker Protection Act requires farm labor contractors, agricultural employers and agricultural associations who recruit migrant and seasonal agricultural workers to disclose in writing the terms and conditions of employment and to provide, upon request, a written statement of such terms.

#### Employment and Training Administration

Title 20 CFR Part 601, Administrative Procedures

ETA-RC 71

On occasion

State or local government

3,127 responses; 52 hours

Requires states to submit copies of their employment compensation laws for approval by the Secretary of Labor, as well as all relevant state materials which allow the Secretary to make finds required by the Internal Revenue Code of 1954, the Social Security Act, and the Wagner-Peyser Act.

#### Collection of Information in Current Rules

Occupational Safety and Health Administration

Onsite Consultation Agreements

OSHA 280

On occasion

State or local governments, non-profit institutions

1,912 respondents; 85,838 hours; 0 forms

OSHA places requirements upon the States which it funds to provide consultation to employers to assist them in achieving a safe and healthful workplace. These requirements are intended to assure that there is a uniform standard of consultation service provided in all States nationwide. For example, all States are required to provide employers with a written report of the consultant's findings.

Signed at Washington, D.C. this 21st day of February, 1985.

Paul E. Larson

Departmental Clearance Officer.

[FR Doc. 85-4666 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-26-4510-27-4510-30-M

#### All Items Consumer Price Index for All Urban Consumers; United States City Average

Pursuant to section 112 of the 1976 amendments to the Federal Election Campaign Act (Pub. L. 94-283, 2 U.S.C. 441a), the Under Secretary of Labor has certified to the Chairman of the Federal Election Commission and publishes this notice in the Federal Register that the United States City Average All Items Consumer Price Index for All Urban Consumers (1967=100) increased 110.6 percent from its 1974 annual average of 147.7 to its 1984 annual average of 311.1. Using 1974 as a base (1974=100), I certify that the United States City Average All Items Consumer Price Index for All Urban Consumers thus increased 110.6 percent from its 1974 annual average of 100 to its 1984 annual average of 210.6.

Signed at Washington, D.C., on the 20th day of February 1985.

Ford B. Ford,

Under Secretary.

[FR Doc. 85-4665 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-24-M

#### Employment Standards Administration

##### Office of Workers' Compensation Programs; Report on Computer Matching Project Involving Certain Beneficiaries Under the Federal Employees' Compensation Act

**SUMMARY:** The Department of Labor, Employment Standards Administration, Office of Workers' Compensation Programs (OWCP), announces a computer match, to be performed by the State of Florida, or the names and Social Security Numbers of beneficiaries under the Federal Employees' Compensation Act who receive compensation for total disability on the periodic roll and have mailing addresses in or near the State of Florida, and the wage report files maintained by the Florida Department of Labor and Employment Security, Division of Unemployment Compensation.

a. *Authority:* the Federal Employees' Compensation Act (FECA) 5 U.S.C. 8101, et seq.

b. *Description of the Match:* In administering the FECA the OWCP is responsible for assuring that benefit payments are proper and for preventing fraud and abuse. The computer matching program is an efficient and non-intrusive method of determining the propriety of program beneficiaries receiving compensation for total disability. The matching effort will compare the name and Social Security Number of the beneficiary receiving compensation for total disability having a mailing address in or near Florida with the wage reporting file of the Division of Unemployment Compensation. The intent of the match will be to identify those beneficiaries who, while receiving compensation for total disability under the FECA, had earnings which were not reported to the OWCP. The organizations in the match are the Florida Department of Labor and Employment Security and the Office of Workers' Compensation Programs of the U.S. Department of Labor. The OWCP will provide to the state agency, on computer tape, the name and the Social Security Number of the selected beneficiaries. The State of Florida will match its state wage report file against these tapes. The records resulting in matches will be submitted to the OWCP



(along with the source material) for validation and editing against case files in the OWCP system of records. After editing, OWCP will determine which cases shall be further processed or investigated to ascertain whether the individual actually had earnings which should have been reported to the OWCP. Action will be taken to assure that benefits are not being paid in those cases in which there is no entitlement. Certain findings may be submitted to the Department of Justice through the U.S. Department of Labor, Office of the Inspector General, for prosecution. The State agency will not use the material from the match for any purpose. The sole beneficiary of the match will be the OWCP.

*c. Description of Federal Records to be Matched:* DOL/ESA-13 Office of Workers' Compensation Programs, Federal Employees' Compensation Act file (47 FR Vol. 234, p. 30382, July 1, 1982; as amended in 48 FR Vol. 27, p. 5826, February 8, 1983) will be the source of the information being furnished to the state.

*d. Period of the Match:* The match should begin on or about March 1, 1985. Follow-up procedures may extend through the 1985 calendar year.

*e. Security:* The personal privacy of individuals identified is protected by strict compliance with the Privacy Act (PL 93-579) and OMB Circular A-108. Information from the match will be used only for official purposes, and will not be released to the public. Within the limits of the Florida State Records Act, no source materials or information contained therein or any matching information will be duplicated or disseminated within or within the matching agency of the state, and personnel of the matching agency will have access to the material or password only for the purpose of furthering the matching program. To insure compliance with PL 93-579, DOL will maintain physical custody of the state's matching product. The source information and the information contained therein will not be used for any purpose other than the match describe above. Source information shall be fully protected and in the custody of the state only while the match is being run. The matching file (source information) supplied by the OWCP and any information resulting from the match will be returned directly by the state to the OWCP. It is understood that the source material remains the property of the OWCP.

*f. Disposition of the Records:* As indicated above, all records sent to the state as well as records of matches will be returned to the OWCP. The matching

record will be edited, using information contained in OWCP's file. Where there is a question of the entitlement of the claimant to receive compensation or compensation at a particular level, the case will be set for investigation. There will be no payment discontinued solely because the name appears as a match. The original source material will be destroyed or expunged and the raw listing of matches will not be kept after editing. However, records of matches which are further processed or investigated will be made part of the case file of the beneficiary along with the results of the investigation.

*g. Other Comments:* The match is being performed solely for the purpose of the OWCP by the state without any use of the information by them. The actual amount of compensation being received will not be in the source material furnished to the state.

Signed at Washington, D.C., this 21st day of February 1985.

Lawrence W. Rogers,  
Director, Office of Workers' Compensation Programs.

[FR Doc. 85-4663 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-27-M

## Employment and Training Administration

### Federal-State Unemployment Compensation Program; New Extended Benefit Period in Alaska

This notice announces the beginning of a new Extended Benefit Period in Alaska, effective on January 20, 1985, and remaining in effect for at least 13 weeks from that date.

#### Background

The Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) established the Extended Benefit Program as a part of the Federal-State Unemployment Compensation Program. Under the Extended Benefit Program, individuals who have exhausted their rights to regular unemployment benefits (UI) under permanent State (and Federal) unemployment compensation laws may be eligible, during an extended benefit period, to receive up to 13 weeks of extended unemployment benefits, at the same weekly rate of benefits as previously received under the State law. The Federal-State Extended Unemployment Compensation Act is implemented by State unemployment compensation laws and by Part 615 of Title 20 of the Code of Federal Regulations (20 CFR Part 615).

Each State unemployment compensation law provides that there is a State "on" indicator (triggering on an Extended Benefit period) for a week if the head of the State employment security agency determines that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment in the State equaled or exceeded the State trigger rate. The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator in the State. A benefit period will be in effect for a minimum of 13 weeks, and will end the third week after there is an "off" indicator.

#### Determination of an "on" Indicator

The head of the employment security agency of the State named above has determined that the rate of insured unemployment in the State, for the 13-week period ending on January 5, 1985, equals or exceeds 6 percent, so that for the week ending January 5, 1985, there was an "on" indicator in the State.

Therefore, a new Extended Benefit Period commenced in the State with the week beginning on January 20, 1985. This period will continue for no less than 13 weeks, and until three weeks after a week in which there is an "off" indicator in the State.

#### Information for Claimants

The duration of extended benefits payable in the Extended Benefit Period, and the terms and conditions on which they are payable, are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to extended benefits to each individual who has established a benefit year in the State that will expire after the new Extended Benefit Period begins. 20 CFR 615.13(d)(1). The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law to regular benefits during the Extended Benefit Period. 20 CFR 615.13(d)(2).

Persons who believe they may be entitled to extended benefits in the State named above, or who wish to inquire about their rights under the Extended Benefit Program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.



Signed at Washington, D.C., on February 19, 1985.

Frank C. Canillas,

Assistant Secretary of Labor.

[FR Doc. 85-4680 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-30-M

### Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Whitney Blake Co., et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period February 11, 1985-February 15, 1985.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-15,599; Whitney Blake Co., Hamden, CT

TA-W-15,635; New Seaboard Industries, Seaboard, NC

TA-W-15,642; New Carolina Industries, Weldon, NC

TA-W-15,645; Power Piping Co., Pittsburgh, PA

TA-W-15,596; New Balance Athletic Shoe, Inc., Allston, MA

TA-W-15,597; New Balance Athletic Shoe, Inc., Norridgewock, ME

TA-W-15,579; Genesco, Inc., Footwear Sector, Chapel Hill Terminal, Chapel Hill, TN

TA-W-15,581; Genesco, Inc., Footwear Sector, Genstar Terminal, Nashville, TN

TA-W-15,584; Genesco, Inc., Footwear Sector, Main St. General

Maintenance & Capitol Products, Nashville, TN

TA-W-15,585; Genesco, Inc., Footwear Sector, Gencon, Nashville, TN

### Affirmative Determinations

TA-W-15,461; Fender Musical Instruments, Hoopeston, IL

A certification was issued covering all workers separated on or after September 6, 1983.

TA-W-15,518; C & C Styles, Inc., Weehawken, NJ

A certification was issued covering all workers separated on or after December 1, 1983 and before November 6, 1984.

TA-W-15,541; Haywood Mals, Inc., Hopkinsville, KY

A certification was issued covering all workers separated on or after October 25, 1983 and before December 1, 1984.

TA-W-15,522; Mildred Fran Dress Co., Inc., West New York, NJ

A certification was issued covering all workers separated on or after January 1, 1984 and before June 30, 1984.

TA-W-15,601; Mode O'Day Co., Mason City, IA

A certification was issued covering all workers separated on or after October 26, 1983 and before January 31, 1985.

TA-W-15,630; Mode O'Day Co., Salt Lake City, UT

A certification was issued covering all workers separated on or after December 4, 1983 and before January 31, 1985.

TA-W-15,631; Mode O'Day Co., San Bernadino, CA

A certification was issued covering all workers separated on or after December 4, 1983 and before January 31, 1985.

TA-W-15,632; Mode O'Day Co., Hastings, NE

A certification was issued covering all workers separated on or after December 4, 1983 and before January 31, 1985.

TA-W-15,633; Mode O'Day Co., Los Angeles, CA

A certification was issued covering all workers separated on or after December 4, 1983 and before January 31, 1985.

TA-W-15,634; Mode O'Day Co., Burbank, CA

A certification was issued covering all workers separated on or after December 4, 1983 and before January 31, 1985.

TA-W-15,586; Genesco, Inc., Footwear Sector, Company Headquarters, Nashville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,567; Genesco, Inc., Footwear Sector, J & M Plant, Nashville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,568; Genesco, Inc., Footwear Sector, Danville Plant, Danville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,569; Genesco, Inc., Footwear Sector, Fulton Plant, Fulton, MS

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,570; Genesco, Inc., Footwear Sector, Iuka Plant, Iuka, MS

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,571; Genesco, Inc., Footwear Sector, Ripley Plant, Ripley, MS

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,572; Genesco, Inc., Footwear Sector, McMinnville Plant, McMinnville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,573; Genesco, Inc., Footwear Sector, Lewisburg Plant, Lewisburg, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,574; Genesco, Inc., Footwear Sector, Pulaski Plant, Pulaski, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,575; Genesco, Inc., Footwear Sector, Waynesboro Plant, Waynesboro, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,576; Genesco, Inc., Footwear Sector, Hohenwald Plant, Hohenwald, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,577; Genesco, Inc., Footwear Sector, Camden Plant, Camden, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,578; Genesco, Inc., Footwear Sector, Tullahoma Computer Stitch, Tullahoma, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,579; Genesco, Inc., Footwear Sector, Tullahoma Computer Stitch, Tullahoma, TN

A certification was issued covering all workers separated on or after November 21, 1983.



TA-W-15,580; Genesco, Inc., Footwear Sector, Fayetteville Terminal, Fayetteville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,582; Genesco, Inc., Footwear Sector, Huntsville Terminal, Huntsville, AL

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,583; Genesco, Inc., Footwear Sector, 63rd Ave. Warehouse, Nashville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,586; Genesco, Inc., Footwear Sector, Southern Sole, Nashville, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,587; Genesco, Inc., Footwear Sector, Tullahoma Capitol Products, Tullahoma, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,588; Genesco, Inc., Footwear Sector, Chapel Hill Sole Cutting, Chapel Hill, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,589; Volunteer Leather Co., a Div. of Genesco, Inc., Milan, TN

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,590; Whitehall Leather Co., a Div. of Genesco, Inc., Whitehall, MI

A certification was issued covering all workers separated on or after November 21, 1983.

TA-W-15,591; Wood & Hyde Leather Co., a Div. of Genesco, Inc., Gloversville, NY

A certification was issued covering all workers separated on or after November 21, 1983.

I hereby certify that the aforementioned determinations were issued during the period February 11, 1985-February 15, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: February 19, 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-4661 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-30-M

#### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; AT&T Consumer Products, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this

notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 8, 1985.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than March 8, 1985.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 19th day of February 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

#### APPENDIX

| Petitioner: Union/workers or former workers of—       | Location           | Date received | Date of petition | Petition number | Articles produced                                                                  |
|-------------------------------------------------------|--------------------|---------------|------------------|-----------------|------------------------------------------------------------------------------------|
| AT & T Consumer Products (IBEW)                       | Indianapolis, IN   | 1/8/85        | 1/2/85           | TA-W-15,741     | Telephone sets and integrated circuits.                                            |
| Bethlehem Steel Corp. (USWA)                          | Sparrows Point, MD | 2/4/85        | 1/31/85          | TA-W-15,742     | Basic steel, finishing mills.                                                      |
| Brown Shoe Co. (workers)                              | McKenzie, TN       | 2/5/85        | 1/30/85          | TA-W-15,743     | Shoes.                                                                             |
| Crompton Co., Inc. (workers)                          | Montreal, AR       | 2/4/85        | 1/29/85          | TA-W-15,744     | Textiles—corduroy.                                                                 |
| D.B. Rosenblatt (ACTWU)                               | Fergus Falls, MN   | 1/8/85        | 12/27/85         | TA-W-15,745     | Suits, vests, ladies' and mens'.                                                   |
| D.B. Rosenblatt (ACTWU)                               | Minneapolis, MN    | 1/8/85        | 12/27/85         | TA-W-15,746     | Suits, vests, ladies' and mens'.                                                   |
| Hadley Div. of Dalton Industries, Inc. (ILGWU)        | Ashville, NC       | 1/23/85       | 1/14/85          | TA-W-15,747     | Pants, blouses, skirts, ladies'.                                                   |
| Mount Vernon Mills, Inc. (company)                    | Calhoun, GA        | 2/4/85        | 2/1/85           | TA-W-15,748     | Woven fabrics, home furnishings, cotton satens, & shoe fabrics, cotton sales yarn. |
| Tacon, Inc./Emhart Corp., South Hadley Div. (company) | South Hadley, MA   | 1/29/85       | 1/23/85          | TA-W-15,749     | Insole material for manufacturing shoes.                                           |
| Tacon, Inc./Emhart Corp., Russell Div. (company)      | Huntington, MA     | 1/29/85       | 1/23/85          | TA-W-15,750     | Insole materials for manufacturing shoes.                                          |
| Tacon, Inc./Emhart Corp., Westfield Div. (company)    | Westfield, MA      | 1/29/85       | 1/23/85          | TA-W-15,751     | Insole material for manufacturing shoes.                                           |
| U.S. Steel Corp., Gary Sheet & Tin (USWA)             | Gary, IN           | 2/4/85        | 2/1/85           | TA-W-15,752     | Sheet and tin.                                                                     |

[FR Doc. 85-4662 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-30-M



**Mine Safety and Health Administration**

(Docket No. M-85-13-C)

**Plateau Mining Co.; Petition for Modification of Application of Mandatory Safety Standard**

Plateau Mining Company, P.O. Drawer PMC, Plateau, Utah 84501 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Star Point No. 2 Mine (I.D. No. 42-00171) located in Carbon County, Utah. The Petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that weekly examinations for hazardous conditions be made in the return of each split of air where it enters the main return and in at least one entry of each intake and return air course in its entirety.

2. Petitioner seeks a modification of the standard as it applies to longwall operations in the mine's 8th Left Tailgate Entry. Petitioner states that application of the standard would result in a diminution of safety for those miners required to travel the entry. Despite the installation of extensive roof support in the tailgate entry, the area is unsafe to travel due to deteriorating roof conditions. The entry was bolted with 8-foot resin bolts and 5-foot conventional bolts on approximately 3-foot centers with roof mats during development. The entry was supported with a double row of 36 inch square cribs on 9-foot centers along the entry and a 6-foot center to center spacing between rows in advance of the previous longwall panel mining.

3. As an alternate method which will at all times guarantee no less than the same measure of protection afforded the miners as that required by the standard, petitioner proposes the following:

(a) The primary (intake) and secondary (beltline) escapeways in the headgate entries will be maintained in travelable conditions at all times;

(b) The longwall tailgate entry will be examined at the longwall face and ventilation will be evaluated for hazardous conditions on each preshift examination. The tailgate entry will be examined at the junction with the main returns, and ventilation will be evaluated for hazardous conditions on each preshift examination.

Measurements for air volume, methane content, oxygen deficiency, and carbon monoxide levels will be taken with approved devices. Any hazardous

conditions found will be corrected before production is begun;

(c) A date board or book will be maintained at each evaluation point with the date, time and initials of the person making the evaluation. The results of each evaluation will be recorded in a book kept at each station and on the surface;

(d) A rock dusting unit has been installed on the last tailgate shield. This duster will be run continually during coal mining to prevent accumulations of float coal dust in the tailgate entry;

(e) Persons will not be allowed to enter the tailgate entry while the longwall is in operation;

(f) Six self-contained self-rescuers will be stored at the longwall tailgate and six will be stored at the midpoint of the longwall face; and

(g) This plan will remain in effect for the duration of the longwall panel using the 8th Left tailgate entry.

4. In addition to the petition for modification, petitioner submitted a request for interim relief. After a careful review of the application for interim relief, the petition for modification, and MSHA's investigative report, interim relief was granted on February 6, 1985, with the following stipulations:

(a) Air measurement stations shall be established in the longwall tailgate entry at the following locations to allow effective evaluation of ventilation in the entry:

(1) Outby the longwall at the safest point near to where the tailgate entry becomes impassable;

(2) At the junction with the main returns; and

(3) Inby the junction with the main returns at the safest point near to where the tailgate entry becomes impassable.

(b) During each preshift examination, a certified person shall examine for hazardous conditions at the air measurement stations and evaluate ventilation in the longwall tailgate entry by determining whether the air is traveling in its proper direction and by making measurements with approved devices for air volume, methane content, oxygen deficiency, and carbon monoxide content. If any hazardous condition exists, electrically operated equipment in affected areas shall be deenergized immediately and such equipment shall not be energized until the hazardous condition is corrected;

(c) The date, time, and results of these determinations shall be recorded in a book, or on a date board, that shall be provided at each measuring station. Such results shall also be recorded in a

book kept on the surface and made accessible to all interested parties;

(d) Methane gas or other harmful, noxious, or poisonous gases shall not exceed permissible limits. An increase of 0.5 per centum methane above the last previous methane reading shall cause an immediate investigation of the affected airways. If at any time the air quantity at any of the measuring stations indicates a reduction of 10 percent, an immediate investigation of the affected area will be conducted;

(e) A diagram showing the normal direction of the air current flow in this area shall be posted at each measuring station and at other strategic locations. Such a diagram shall be maintained in a legible condition. Any change in the flow of the air currents shall be reported to the mine foreman immediately;

(f) Air measuring stations shall be shown on the mine ventilation system and methane and dust control map and shall be a part of the approved ventilation plan for the mine. No air measuring station shall be moved to another location without prior approval;

(g) All air measurement stations and approaches to such stations shall, at all times, be maintained in a safe condition. The roof shall be supported by roof bolts or other suitable means;

(h) All persons who work on the 7th left longwall section shall be instructed immediately (upon receipt of the granted interim relief request) in the emergency evacuation procedures and all provisions of 30 CFR 75.1101-23 and 75.1704-2, including utilization of the designated intake and belt escapeways located in the headgate entries. Persons who are not normally employed in this area shall be instructed in the emergency evacuation procedures outlined above and escapeway routes before starting work in this area;

(i) A rock dusting unit shall be installed on the last tailgate shield. The rock dusting unit shall run continuously during mining operations to render inert float coal dust in the tailgate entry;

(j) No person shall enter the tailgate entry while the longwall is in operation;

(k) Six Drager self-contained self-rescuers shall be stored at the longwall tailgate and six Drager self-contained self rescuers shall be stored at the midpoint of the longwall face; and

(l) All miners on the 7th left longwall section shall be familiarized with the proposed alternate method, including all stipulations made in the granting of interim relief.

**Request for Comments**

Persons interested in this petition may furnish written comments. These



comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before March 28, 1985. Copies of the petition and its related documents are available for inspection at that address.

Dated: February 15, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 85-4664 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-43-M

### Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 85-39; Exemption Application No. D-5216 et al.]

### Grant of Individual Exemptions; Inter First Corp; et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43

FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### InterFirst Corporation Retirement Program (the Plan) Located in Dallas, Texas

[Prohibited Transaction Exemption 84-39; Exemption Application No. D-5216]

### Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sections resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the lease of real property by the Plan to InterFirst Bank Dallas, N.A., a party in interest with respect to the Plan, provided that such lease was and will continue to be on terms and conditions at least as favorable to the Plan as those obtainable by the Plan in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 26, 1984 at 49 FR 43127.

Effective Date: This exemption will be effective July 1, 1984.

### Comments and Hearing Requests

One comment was received from a Plan participant questioning the appointment of Mr. Raymond L. Thompson (Mr. Thompson) to act as independent fiduciary on behalf of the Plan. In the letter, the commentator raised the following objections to Mr. Thompson's appointment:

(1) The land owned by the Plan (Land) is 100% leased to the Prudential Insurance Company of America (Prudential).

(2) Mr. Thompson has retired from Prudential after 35 years of service.

(3) Mr. Thompson receives retirement pay from Prudential.

(4) Mr. Thompson must have some closeness with Prudential after 35 years of employment with the company.

(5) Mr. Thompson will decide when the Plan should divest itself of ownership of the Land.

(6) Since Prudential owns 100% of the building on the Land, the future sale of that building might hinge on ownership of the Land.

(7) Dallas is a large city, and InterFirst Bank Dallas, N.A. (Bank) should have been able to find someone as well or better qualified to act as an independent fiduciary with respect to the leasing transaction.

The applicant represents that the commentator misstated at least two important facts in his letter. First, the commentator's assertion that the Land is 100% leased to Prudential is incorrect, because the Land is leased to the Bank, subject to an assignment of lease to Prudential that takes effect at some point in the future, possibly as late as the year 2047. Although the Bank has agreed to sublease the Land to Prudential, the Bank remains primarily responsible for the performance of all obligations under the lease. Because the Bank is the primary lessee, Mr. Thompson will look to the Bank, not Prudential, to fulfill the obligations under the lease. This distinction, the applicant states is important because it substantially weakens the commentator's inference that Mr. Thompson's prior relationship with Prudential would somehow affect Mr. Thompson's enforcement and monitoring of the lease. The applicant represents that the only relationship now present between Mr. Thompson and Prudential is that of being a beneficiary of its pension plan and these benefits are represented to be fully vested and therefore cannot be affected in any way by the actions Mr. Thompson takes as independent fiduciary.

Second, the applicant states that the commentator's assertion that only Mr. Thompson will decide when the Plan should divest itself of ownership of the Land, is also incorrect. The applicant represents that Mr. Thompson has the power only to recommend that the Plan divest itself of the Land if, and when, divestiture becomes appropriate. Any such divestiture, however, must be approved by the Bank, in its capacity as trustee of the Plan.

The commentator contends that because "Dallas is a large city, there should be someone as well, or better qualified, to act as fiduciary who has no



ties to either Prudential or InterFirst Corporation." The applicant states that although it is true that there are other persons in Dallas who may be qualified to serve as an independent fiduciary with respect to this transaction, the commentator ignores that fact that many such persons would be unable or unwilling to serve in such capacity because of a conflict of interest with the Bank. The Bank's trust department is one of the largest trust departments in the Southern and Southwestern United States. The Bank serves as trustee or fiduciary for over 3,200 trusts, including approximately 300 employee pension plans. The total assets that the Bank manages as fiduciary is approximately \$5,220,615,000. Because of the Bank's size and the extensive activity in the Bank's trust department, there was only a limited pool of fiduciaries who have the requisite experience in real estate transactions of this type and who do not have a conflict of interest with the Bank. The applicant represents that the Plan selected the individual who they believed could best do the job.

After consideration of the entire record, the Department has determined to grant the exemption.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**Profit Sharing Retirement Plan of Broyhill Furniture Industries, Inc. (the Plan) Located in Lenoir, North Carolina**

[Prohibited Transaction Exemption 85-40; Exemption Application No. D-5318]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to certain leases of improved real property by the Plan to Broyhill Furniture Industries, Inc., provided that the terms of the leases are and will remain at least as favorable to the Plan as those the Plan could obtain in similar leases with unrelated parties.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on November 9, 1984 at 49 FR 44823.

Effective Date: This exemption will be effective July 1, 1984.

**Comments and Request for a Hearing**

One request for a hearing was received by the Department which was subsequently withdrawn by the requestor. Therefore, based on the entire

record, the Department has decided to grant the exemption as proposed.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**Drs. Kaufman, Yosowitz & Gableman, Inc., Money Purchase Pension Retirement Plan & Trust (the Plan) Located in Cleveland Heights, Ohio**

[Prohibited Transaction Exemption 85-41; Exemption Application No. D-5518]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the proposed loan of \$500,000 by the Plan to Drs. Kaufman, Yosowitz & Gableman, Inc., provided that the terms of the transaction are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48827.

For Further Information Contact: Mr. Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

**Call-Chronicle Newspapers, Inc. Pension Plan and Trust and Call-Chronicle Newspapers, Inc. Stock Savings Plan and Trust (the Plan) Located in Allentown, Pennsylvania**

[Prohibited Transaction Exemption 85-42; Exemption Application Nos. D-5752 and D-5753]

**Exemption**

The restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) the sale by the Plans of their respective holdings of the capital stock of Call-Chronicle Newspapers, Inc. to the Times Mirror Company (Times Mirror), which on the date of sale became the employer whose employees are covered by the Plans; and (2) the extension of credit pursuant to the sale by the Plans to Times Mirror, provided that the terms of the sale and extension of credit were no less favorable to each of the Plans than those terms obtainable in arm's length transactions with unrelated parties.

Effective Date: The exemption is effective December 15, 1984.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on December 14, 1984 at 49 FR 48828.

For Further Information Contact: Mrs. Mary Jo Fite of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 21st day of February 1985.

Elliot L. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-4636 Filed 2-25-85; 8:45 am]

BILLING CODE 4510-29-M



[Application No. D-5272 et al.]

**Proposed Exemptions; Broman and Woolley Profit Sharing Plan, et al.**

**AGENCY:** Pension and Welfare Benefit Programs, Labor.

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

**Written Comments and Hearing Requests**

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this *Federal Register* Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

**ADDRESS:** All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

**Notice to Interested Persons**

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the *Federal Register*. Such notice shall include a copy of the notice of pendency of the exemption as published in the *Federal Register* and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471,

April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

**Broman and Woolley Profit Sharing Plan (the Plan) Located in Salt Lake City, Utah**

[Application No. D-5272]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply, effective July 1, 1984, to (1) a lease of certain real property by the Plan to Broman and Woolley, P.C. (the Employer), the sponsor of the Plan; (2) a lease of certain real property by the Plan to Wallace E. Beck, D.D.S. (Dr. Beck), a party in interest with respect to the Plan; and (3) an extension of credit to the Plan by Crown Enterprises (Crown), a partnership which is a party in interest with respect to the Plan; provided that all terms of such transactions are at least equivalent to those which the Plan could obtain in dealing at arm's length with unrelated parties.

**Effective Date:** This exemption, if granted, will be effective July 1, 1984.

**Summary of Facts and Representations**

1. The Plan is a defined contribution pension plan with six participants and total assets of \$480,851 as of March 31, 1984. The Employer is a Utah professional corporation engaged in the general practice of dentistry. Crown is a Utah general partnership comprised of Dr. Beck and Drs. L. Lynn Broman, D.D.S. and Joseph A. Woolley, D.D.S., each of whom owns a one-third interest in Crown. Drs. Broman and Woolley are shareholders and employees of the Employer and Dr. Beck is a former

shareholder/employee of the Employer. Dr. Woolley serves as trustee of the Plan.

2. On July 1, 1974, the Plan's predecessor plan, the Beck, Broman and Woolley Profit Sharing Plan, purchased a parcel of improved real property (the Property) from Crown. The Property consists of 15,262 square feet of land improved with a dental office building containing five office suites and is located at 215 South 1000 East in Salt Lake City, Utah. As part of the sale transaction between Crown and the Plan's predecessor, Crown extended credit to the Plan's predecessor in the amount of \$115,000 (the Loan), which was the full purchase price of the Property, payable over fifteen years with eight percent annual simple interest. The Employer represents that the Loan was exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(1) of the Act.<sup>1</sup> The Plan assumed the obligations of its predecessor under the Loan. Commencing July 1, 1974, three of the five office suites in the Property (the Leased Space) were leased (the Original Lease) by the Plan's predecessor to the Employer's predecessor corporation, Beck, Broman and Woolley, P.C. Since that date, the Leased Space has been leased continuously to the Employer's predecessor corporation and, later, to the Employer and to Dr. Beck. The other two office suites in the Property not included in the Leased Space have been and continue to be leased to parties unrelated to the Plan. Commencing December 28, 1983, Dr. Beck leased on suite among the three in the Leased Space separately from the Employer, as Dr. Beck had left the Employer's predecessor corporation and had begun to practice dentistry independently. The Employer has continued to lease and occupy the remaining two suites in the Leased Space continuously under the Original Lease, most recently renewed on February 1, 1983. The Employer represents that the lease of the Leased Space by the Plan's predecessor to the Employer's predecessor was exempt from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act. The Employer also represents that the leases of the Leased Space by the Plan to the Employer and to Dr. Beck constitute renewals of a binding contract in effect as of July 1, 1974, and that such leases were therefore exempt until June 30, 1984 from the prohibitions

<sup>1</sup> The Department expresses no opinion as to whether the Loan was exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(1) of the Act.



of section 406 of the Act by virtue of section 414(c)(2) of the Act.<sup>2</sup> Dr. Beck, as lessee, the Employer as lessee, and Drs. Beck, Broman and Woolley, as partners in Crown (collectively, the Applicants), are requesting an exemption to permit the continuation past June 30, 1984 of Crown's extension of credit to the Plan and the leases of the Leased Space by the Plan to the Employer and to Dr. Beck under modifications of the Original Lease as described herein effective July 1, 1984.

3. Under the provisions of the Loan, the Plan pays Crown in equal monthly payments of \$958.00, including principal and interest. The Plan's obligations under the Loan extend through and terminate on July 31, 1989. As of March 31, 1984, the outstanding balance of the Loan, including principal and interest, was \$50,215. The Plan's interests with respect to the Loan are represented by Zions First National Bank of Salt Lake City (the Bank). The Bank represents that it is qualified to act as independent fiduciary on behalf of the Plan, that there are no ownership or directorate affiliations between the Bank and the Employer, and that total deposits in the Bank by parties related to the Plan in the transactions described herein represent less than .000008 percent of total Bank deposits. The Bank makes the monthly Loan payments to Crown on behalf of the Plan from funds collected in rents from the Property. The Bank has reviewed the terms and conditions of the Loan and its continuation after June 30, 1984. As a result of this review, the Bank represents that the terms of the Loan are extremely favorable to the Plan in the context of current market conditions. Noting that the Loan provides for an interest rate of eight percent, the Bank represents that the Plan could reasonably expect to pay an interest rate of approximately fourteen percent if the Loan were originated under current market conditions. The Bank recommends against any change in the Loan terms and represents that there would be no advantage to the Plan in amending the Loan terms in any way. For the proposed duration of the Loan, the Bank will continue to represent the interests of the Plan for all purposes.

4. In recognition of the June 30, 1984 expiration of the exemption provided in section 414(c)(2) of the Act, certain amendments of the Original Lease have been executed, commencing June 11,

1984, in anticipation of the proposed continuation past June 30, 1984 of the Plan's lease of the Leased Space to the Employer and Dr. Beck. Pursuant to these amendments, since June 11, 1984, the interests of the Plan for all purposes regarding the Leased Space have been represented by the Bank. These amendments of the Original Lease constitute adjustments in the lease arrangements, effective July 1, 1984, to facilitate a request for an administrative exemption for the continuation of the lease arrangements beyond June 30, 1984. Commencing July 1, 1984, the Plan has leased the Leased Space to the Employer and Dr. Beck under the Original Lease as so amended (the New Leases). Consistent with the arrangements under the Original Lease, the New Leases include the Employer's lease of a certain portion of the Leased Space and Dr. Beck's separate lease of another portion of the Leased Space, since Dr. Beck has continued to practice dentistry independently from the Employer. The terms of the New Leases to Dr. Beck and the Employer are identical. The New Leases are triple net leases under which the lessees assume responsibility for all taxes, all costs of maintenance and repair, and full fire and extended coverage insurance of the Leased Space. The New Leases require the lessees to indemnify the Plan and hold the Plan harmless against all claims, demands and liabilities arising from the lessees' uses of the Leased Space. Each New Lease has a term of nine years, commencing July 1, 1984. Initial rental under each New Lease, commencing July 1, 1984, was established by the Bank after a complete investigation of market conditions, affecting the rental value of the Leased Space. The Bank represents that such initial rentals provide the Plan a return which is no less than the fair market rental value of the Leased Space. Accordingly, the Bank has set Dr. Beck's initial rental at \$5,040 per year, payable in monthly installments of \$420.00, and has set the Employer's initial rental at \$10,080 per year, payable in monthly installments of \$840.00. On the fourth and seventh anniversaries of the commencement of each New Lease, the rentals shall be redetermined. Commencing on such anniversaries, the rentals shall be computed by increasing the rental for the preceding three-year period in the same proportion as the Consumer Price Index, All Items (prepared by the U.S. Department of Labor), has increased from the base Index for the first month of the preceding three-year period of each New Lease. However, if the Bank determines

that the increased rentals, as so adjusted, fail to provide the Plan a return at least equivalent to the fair market rental value of the Leased Space, the Bank may require that the rentals commencing on the fourth or seventh anniversaries shall be the appraised fair market rental value of the Leased Space as determined by an independent professional real estate appraiser selected by the Bank. In no event shall rentals under the New Leases fall below the initial rentals.

5. The Property was appraised for its fair market value on September 10, 1984 by Thomas E. Mulcock, IFAS (Mulcock), an independent professional real estate appraiser with the Mulcock Appraising Company of Salt Lake City, Utah. Mulcock represents that as of that date the Property had a fair market value of \$160,000 to \$180,000. Based on Mulcock's appraisal, an inspection of the Property, and an investigation of the local real estate market, the Bank has determined that the fair market value of the Property as of September 14, 1984 was \$170,000. The Leased Space, totaling 2,289 square feet, constitutes 64.4 percent of the 3,543 square feet of available rental space in the Property. Based on the Property's fair market value of \$170,000, the fair market value of the Leased Space is \$109,820. After the September valuation of the Property, the statement of total Plan assets of March 31, 1984 was revised to reflect the updated Property valuation, resulting in total plan assets of \$439,906 as of September 14, 1984. Thus, the fair market value of the portion of the Property being leased to Dr. Beck and the Employer under the New Leases constitutes 24.96 percent of the total assets of the Plan as so adjusted.

6. The Bank has reviewed and evaluated the Plan's lease of the Leased Space to the Employer and Dr. Beck under the New Leases and has determined that the continuation of the New Leases beyond June 30, 1984 is in the best interests of the Plan. The Bank represents that its investigation of the rental market in the location of the Property reveals a high vacancy rate among medical/dental office properties and an excess of such properties in that locale, factors which adversely affect the Property's fair market value and its fair market rental value. Thus, the Bank concludes that the Plan's continued leases of the Leased Space to the Employer and Dr. Beck offer the Plan protection from current adverse market conditions, insulating the Plan from losses attributable to vacancy periods and lower rentals likely to result from termination of the New Leases. Further,

<sup>2</sup> The Department expresses no opinion as to whether the leases of the Leased Space by the Plan's predecessor and the Plan to the Employer's predecessor, the Employer and Dr. Beck were exempt until June 30, 1984 from the prohibitions of section 406 of the Act by virtue of section 414(c)(2) of the Act.



because of the abundance of similar real property in the same location the Bank has determined that in a sale of the Property to an unrelated party under current market conditions, the Plan would likely fail to obtain a purchase price fully reflective of the Property's fair market value. For the duration of the New Leases the Bank will retain the authority to exercise independent judgement with respect to the appropriateness of the Plan's continued holding of the Property.

7. In summary, the Applicants represent that the criteria of section 408(a) of the Act are satisfied in the subject transactions because: (1) The interests of the Plan under the Loan and the New Leases for all purposes are and will be represented by an independent fiduciary, the Bank, which has reviewed the subject transactions and determined that they are and will be in the best interests of the Plan; (2) the terms of the Loan are more favorable to the Plan than the Plan could reasonably expect in obtaining an equivalent loan at arm's length from an unrelated party under current market conditions; (3) the Bank has determined that retention of the Property with continuation of the New Leases is preferable to a sale of the Property to an unrelated party, due to current adverse market conditions; (4) the continued lease of the Leased Space under the New Leases protects the Plan from lower rentals and vacancy periods in the Property likely to result from efforts to lease the Leased Space to unrelated parties under current market conditions; (5) the New Leases are triple net leases under which the lessees pay all costs of maintenance and repair in the Leased Space and under which the Plan's investment in the Leased Space is protected with fire and extended coverage insurance paid by the lessees; and (6) with provisions for rental adjustments every three years, the New Leases insure the Plan a return on the Leased Space of no less than its fair market rental value and no less than initial rentals.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

LTV Corporation and Affiliates  
Consolidated Retirement Trust (the  
Trust) Located in Dallas, Texas

[Application No. D-5332]

#### *Proposed Exemption*

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

(a) *General Exemption.* The restrictions of section 406(a)(1)(A) through (D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975 (c)(1)(A) through (D) of the Code, shall not apply to any transaction involving the purchase, ownership, sale, management, leasing and development of real property by the portion of the Trust maintained and managed by Thomas L. Karsten Associates (Karsten) and the LTV Corporation (LTV), the sponsor of the Trust, provided that the following conditions are met:

(1) the party in interest is not:

(i) Karsten, any person directly or indirectly controlling, controlled by or under common control with Karsten (Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of Karsten or any Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which Karsten, any Controlled Person, or any officer, director or highly compensated employee (as defined above) of Karsten or any Controlled Person owns a 5% or more interest; or any corporation, partnership, trust, or unincorporated enterprise which own a 5% or more interest in Karsten or any Controlled Person; or

(ii) LTV, any person directly or indirectly controlling, controlled by or under common control with LTV (LTV Controlled Person); any officer, director, or highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) of LTV or any LTV Controlled Person; any corporation, partnership, trust or unincorporated enterprise in which LTV, any LTV Controlled Person, or any officer, director or highly compensated employee (as defined above) of LTV or any LTV Controlled Person owns a 5% or more interest; or any corporation, partnership trust, or unincorporated enterprise which owns a 5% or more interest in LTV or any LTV Controlled Person; or

(iii) Any person who exercises discretionary authority, responsibility or control or who provides investment advice with respect to the investment of Trust assets involved in the particular transaction;

(iv) The term "interest", as applied in subsections (1) (i) and (ii) above, means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of

stock of the entity if the entity is a corporation.

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(v) A person is considered to own an interest held in any capacity if the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(2) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of Karsten and/or LTV, the terms of the transaction are not less favorable to the Trust than the terms generally available in arm's-length transactions between unrelated parties;

(3)(i) Karsten shall maintain for a period of six years from the date of each transaction mentioned above, records necessary to determine whether the conditions of this exemption have been met. The records above must be unconditionally available at their customary location for examination for purposes reasonably related to protecting rights of the participants of the Trust during normal business hours by:

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service;

(B) Any fiduciary of a plan participating in the Trust who has the authority to acquire or dispose of the interests of the plan in the investment fund subject to the management of Karsten, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of any plan which is funded by the Trust or any duly authorized representative of such participant or beneficiary.

(ii) None of the persons described in subdivision (i)(C) of this subparagraph (3) shall be authorized to examine LTV's or Karsten's trade secrets or commercial or financial information which is privileged, confidential or of a proprietary nature.

(b) *Specific Exemption for Transactions Involving Places of Public Accommodation.* The restrictions of sections 406(a)(1) (A) through (D) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the furnishing of services, facilities and any goods



incidental thereto by a place of public accommodation which is or may be considered an asset of the Trust to a party in interest with respect to the Trust if the services, facilities or incidental goods are furnished on a comparable basis to the general public, and if the requirements of subparagraph (a)(3) of this proposed exemption are met.

Effective Date: If granted, this exemption will be effective January 8, 1983.

#### Summary of Facts And Representations

1. The Trust is a consolidated trust funding benefits for the plans of LTV. The trustee of the Trust (the Trustee) is the Mellon Bank, N.A. located in Pittsburgh, Pennsylvania. Each plan participating in the Trust is allocated a certain number of units in the undivided assets of the Trust. There are twenty-two plans sponsored by LTV which participate in the Trust covering approximately 86,400 participants (active and retired). As of December 31, 1982, the Trust had assets having a market value of approximately \$1.4 billion.

2. LTV is a broadly based public company active in the steel, energy, defense, and aerospace industries. Karsten is a registered investment advisor with principal offices in Los Angeles, California. Karsten specializes in real estate investment throughout the nation and has been engaged in real estate development and asset management for 15 years. Karsten is a wholly-owned subsidiary of First Interstate Investment Services, which is a wholly-owned subsidiary of First Interstate Investment Service, which is a wholly-owned subsidiary of First Interstate Bancorp (Bancorp), one of the largest bank holding companies in the nation. LTV and Karsten do not have any common officers, directors or employees. Karsten does not own any stock of LTV although the Trust held 56,400 shares of Bancorp stock, as of December 31, 1983, comprising approximately .15% of the Trust's assets.

3. Pursuant to an agreement dated December 1, 1982 (the Agreement), LTV appointed Karsten to be an investment manager with respect to a portion of the Trust's assets. Pursuant to the Agreement a separate investment fund was formed (the Fund) managed by Karsten with the purpose of investing in income-producing real properties, i.e. office buildings, apartment complexes, industrial properties and shopping centers. As of March, 1984, Karsten managed approximately \$90 million for the Fund. Karsten serves as an investment manager or advisor with

regard to over \$1.7 billion of assets invested in real estate. Although Karsten has authority to manage the assets of the Fund, the Agreement provides the LTV maintains authority as well with regard to Fund investments. LTV acknowledges that in this regard it is a co-fiduciary with Karsten regarding Fund investments.

In this regard, LTV's rights in the acquisition, management, and disposition of assets of the Fund are exercised by the Real Estate Subcommittee of the Investment Committee for the Trust. The Real Estate Subcommittee consists of two members, the Vice President-Treasurer and the Vice President-Comptroller of LTV. From time to time, at the discretion of the Real Estate Subcommittee, particular matters may be submitted by the Real Estate Subcommittee to the full Investment Committee.

4. Karsten's activities are governed by its contract and the real estate investment strategy approved by both LTV and Karsten. Karsten reviews submittals and seeks out opportunities for real estate investment for the Fund. The real estate investment strategy calls for review by LTV at two points in the acquisition process. In this regard, when a property is identified, Karsten initially reviews it to determine if the proposed investment conforms to the guidelines of the real estate investment strategy. If Karsten preliminarily determines to pursue an investment, it then reviews the project over the telephone with the Real Estate Subcommittee members. Karsten estimates that less than 5% of the projects reviewed reach this stage. The Real Estate Subcommittee may view the project, or the prospective terms or investment amount unfavorably, and therefore reject the proposal.

5. The second review by the Real Estate Subcommittee occurs after a letter of intent to purchase a property has been negotiated by Karsten on behalf of the Fund. At this point LTV may reject the proposal and refuse to allocate assets to the Fund.

If the Real Estate Subcommittee approves of a proposal, Karsten has full authority to negotiate the remaining terms of the transaction, oversee the documentation, and complete its review of leases, service contracts, title, zoning, construction and other matters. In such reviews, Karsten attempts to ensure that no transactions are entered into with parties in interest as described in section (a)(1) of the proposed exemption. Purchase and lease documents are executed by the Trustee on instructions by Karsten. LTV has no further involvement until after a project

is acquired. Karsten may even modify to a certain extent the terms and conditions previously presented to LTV for review.

6. After a project is acquired, Karsten is totally responsible for asset management within the general parameters of the project's annual budget which is reviewed by LTV. Karsten has full authority to act but Karsten would review with LTV extraordinary expenses. (Typically, expenses are paid out of the income from the asset, not out of the Fund itself.) Karsten has full authority to cause the Trustee on behalf of the Trust to enter into leases and contracts. There is no prior review by LTV. LTV cannot compel Karsten to make a lease or enter into a contract with any party.

7. LTV maintains authority to object to the annual operating budget prepared by Karsten for each building, but cannot interfere with its management as long as Karsten operates within the annual budget. As well, a decision to dispose of an asset is subject to review by the Real Estate Subcommittee. In addition to having authority to review a decision by Karsten to dispose of a property, LTV may also compel Karsten to liquidate all or any part of the Fund. LTV's authority to review a disposition decision or to compel full or partial liquidation of the Fund extends only to the sell decision and not to the specific terms and conditions of sale or the identity of the buyer. After the decision to sell is made it is solely implemented by Karsten. LTV cannot determine the terms and conditions of disposition or determine or object to the identity of the buyer.

8. In summary, LTV exercises investment management authority with respect to the proposed acquisition of a property by Karsten, may object to the annual operating budget prepared by Karsten for each building, and may instruct Karsten to liquidate all or part of the real estate portfolio. LTV does not have power over the actual operation of a property provided the property is operated within its annual budget as approved by LTV, cannot cause Karsten to enter into a lease or contract regarding a property, or determine the terms and conditions of a sale or the identity of a buyer of a Fund property.

9. In the absence of coverage of these transactions under any existing class exemption and because of the approval power and other powers exercisable by LTV with respect to the investment of the Fund's assets by Karsten, the applicant requests individual relief for transactions which may occur as a result of the investment of the assets of the Trust by Karsten in real property. In



this regard, the applicant represents that because of the size of the Trust there are many parties in interest who deal with the Trust who may be difficult to identify, or if identifiable, are not in a position to influence the investment of the Trust's assets. For example, the applicant represents that an insurer or service provider with respect to the Trust, or a fiduciary of another portion of the Trust's assets may be a lender, seller, buyer, or lessee of a property purchased by the Trust.

10. The applicant requests exemptive relief for past transactions and for prospective transactions when real property investments effected by the Trust may involve party in interest transactions as described in the Act which the applicant is unable to identify. Such parties in interest will have no formal or actual authority over the investment of the Trust. The applicant represents that such transactions will ensure the normal operation of the Trust without providing relief for transactions which present any inherent conflict of interest under the Act. The applicant represents that the past transactions involved known parties in interest who had no formal or actual authority over the operation of the Trust. For example, one such transaction involved the purchase on January 8, 1983, of a research and development facility located in Austin, Texas involving the IBM Corporation, a non-fiduciary party in interest with respect to the Trust. The applicant therefore requests that the exemption be made retroactive to such date.

11. The applicant states that it is possible that the investment by the Trust in places of public accommodation may result in the use of such facilities by parties in interest. Therefore, such transactions involving these places of public accommodation may constitute prohibited transactions as described in the Act. The applicant requests relief for such transactions subject to the same conditions as those provided in previous individual exemptions.

12. The applicant represents that any covered transactions will be on terms not less favorable to the Trust than those available between the Trust and unrelated parties. The applicant represents that given the size and scope of the Trust and their investments, denial of the exemption would substantially inhibit the Trust from investing in many prime quality real estate projects.

13. In summary, the applicant represents that the transactions meet the criteria for an exemption as provided in section 408(a) of the Act because (a) all investments have been

and will be subject to the discretion and control of Karsten and/or LTV's Real Estate Subcommittee both of which have extensive experience in real property investments and make complete analyses with respect to Trust investments; (b) the Trust has been able to enter into transactions which, although prohibited, are necessary for the prudent conduct of the Trust's operations; (c) all transactions will involve parties who are completely independent from LTV and Karsten and have no discretion, authority or control with respect to the exercise of their fiduciary responsibility relating to the transactions; and (d) all transactions will be conducted on an arm's-length basis on terms not less favorable to the Trust than those available in arm's-length transactions with unrelated parties.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

**Careerlife Plan of Burlington Industries, Inc. (the Plan) Located in Greensboro, North Carolina**

[Application No. D-5921]

**Proposed Exemption**

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408 (a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by Insuratex, Ltd. (Insuratex) from the insurance contracts sold by the Provident Life & Accident Insurance Company of Chattanooga, Tennessee (Provident) to provide life insurance benefits to participants of the Plan, provided the following conditions are met:

- (a) Insuratex—
  - (1) Is a party in interest with respect to the Plan by reason of a stock or partnership affiliation with Burlington Industries, Inc. (Burlington) that is described in section 3(14) (E) or (G) of the Act.
  - (2) Is licensed to sell insurance or conduct reinsurance operations in at least one of the United States, the District of Columbia, or the Virgin Islands.
  - (3) Has obtained a Certificate of Authority from the Insurance Commissioner of the Virgin Islands which has neither been revoked nor suspended; and
  - (4)(A) Has undergone an examination by an independent certified public accountant for its last completed

taxable year immediately prior to the taxable year of the reinsurance transaction; or

(B) Has undergone a financial examination (within the meaning of the law of the Virgin Islands) by the Commissioner of Insurance of the Virgin Islands within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plans pay no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of the contract, or the reinsurance thereof; and

(d) For each taxable year of Insuratex, the gross premiums and annuity considerations received in that taxable year by Insuratex for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Insuratex is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or reinsurance) in that taxable year by Insuratex. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by Insuratex. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by Insuratex.

(2) all premium and annuity considerations written by Insuratex for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

Effective Date: If this proposed exemption is granted, it will be effective July 1, 1984.

**Preamble**

On August 7, 1979, the Department published a class exemption [Prohibited Transaction Exemption 79-41 (PTE 79-41), 44 FR 46365] which permits insurance companies that have substantial stock or partnership affiliations with employers establishing or maintaining employee benefit plans to make direct sales of life insurance, health insurance or annuity contracts which fund such plans, if certain



conditions are satisfied. In PTE 79-41, The Department stated its view that if a plan purchases an insurance contract from a company that is unrelated to the employer pursuant to an arrangement or understanding, written or oral, under which it is expected that the unrelated company will subsequently reinsure all or part of the risk related to such insurance with an insurance company which is a party in interest with respect to the plan, the purchase of the insurance contract would be a prohibited transaction. The Department further stated that as of the date of publication of PTE 79-41, it had received several applications for exemption under which a plan or its employer would contract with an unrelated company for insurance, and that unrelated company would, pursuant to an arrangement or understanding, reinsure part or all of the risk with (and cede part or all of the premiums to) an insurance company affiliated with the employer maintaining the plan. The Department felt that it would not be appropriate to cover the various types of reinsurance transactions for which it had received applications within the scope of the class exemption, but would instead consider such applications on the merits of each individual case.

#### *Summary of Facts and Representations*

1. Burlington is a textile manufacturer with its headquarters located in Greensboro, North Carolina. Under the Plan, full-time employees of Burlington and its subsidiary companies may purchase life insurance for themselves, their spouses, and their children after they have been employed with Burlington for 180 days. Both individual term and individual permanent life insurance are available under the Plan. An employee whose employment with Burlington is terminated may continue his protection under the Plan. Coverage of a spouse is not dependent on whether the employee chooses to participate, and may be continued after the employee's termination of employment. Approximately 39,000 Burlington employees have chosen coverage under the Plan. At the inception of the Plan, approximately 40% of the actual insureds were non-employee spouses or children.<sup>3</sup>

<sup>3</sup> The applicants have also requested an advisory opinion as to whether the Plan is a plan within the meaning of section 3(1) of the Act. The pendency of the exemption proposed herein and any subsequent granting of such exemption is not dispositive of whether or not the Plan is an employee welfare benefit plan for purposes of the Act. That issue is still under consideration by the Department.

2. Insuratex is a wholly owned reinsurance subsidiary of Burlington. Insuratex is organized in Bermuda, has offices there and in the Virgin Islands, and is licensed to engage in reinsurance operations from both places. Insuratex has been in business since 1979, engaging in the reinsurance of property and casualty insurance. Its charter includes the authorization to reinsure life insurance. In its 1984 fiscal year, its gross premium volume was \$10.7 million; it had capital and surplus of \$13.5 million; and its total assets exceeded \$26.9 million.

3. Provident, an unrelated, independent insurer located in Chattanooga, Tennessee, funds the benefits under the Plan and handles all administrative details relating to the Plan, including policy filings, rating, communications, policy issuance, policy provisions, and ongoing maintenance with respect to the insureds. Provident proposes to enter into a reinsurance agreement with Insuratex with respect to risks Provident insures. The reinsurance agreement would provide that Insuratex would be liable to Provident for the same percentage of claims as the percentage of premiums ceded to Insuratex attributable to the Plan. Under the reinsurance agreement, Insuratex will accept the risk for mortality as well as investments. Provident will have the sole contractual liability to the policyholders. The Plan will not be a party to the reinsurance agreement. Insuratex will be responsible for reinsuring Provident for the portion of the liability that it assumes. The maximum liability of Insuratex would be 50% of any paid claim. The applicants have requested that the proposed exemption be made retroactive to July 1, 1984.

4. The applicants represent that the subject reinsurance transactions will meet all of the conditions of PTE 79-41 covering direct insurance transactions:

(a) Insuratex is a party in interest with respect to the Plan as described in section 3(14)(G) of the Act by reason of its stock affiliation with Burlington.

(b) Insuratex is licensed to conduct reinsurance operations from the Virgin Islands.

(c) Insuratex received a Certificate of Authority from the Virgin Islands effective July 1, 1984, and expects to receive an annual renewal of such Certificate in the future.

(d) Insuratex has undergone an examination by the independent certified public accounting firm of Peat, Marwick & Mitchell for its last completed taxable year, ending June 30, 1984.

(e) No more than adequate consideration is paid for the insurance contracts. Provident is one of the largest life insurance underwriters in the country and enjoys substantial economies of scale in computerized policy administration. Thus, the premium charged to Plan participants is highly competitive. The reinsurance agreement is not a factor in Provident's premium computations and, thus, does not in any way affect the cost to the Plan.

(f) No commissions will be paid with respect to either the direct sale of life insurance by Provident to the Plan participants or with respect to the proposed reinsurance agreement between Provident and Insuratex.

(g) For each taxable year of Insuratex, the gross premiums and annuity consideration received in that taxable year by Insuratex for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which Insuratex is a party in interest by reason of a relationship to such employers described in section 3(14)(E) or (G) of the Act do not and will not exceed 50% of the gross premiums and annuity considerations received for all lines of insurance in that taxable year by Insuratex.

5. In summary, the applicants represent that the subject transactions meet the criteria of section 408(a) of the Act because: (1) Plan participants and beneficiaries are afforded insurance protection by Provident, one of the largest and most experienced group insurers in the United States, at competitive rates arrived at through arm's-length negotiations; (2) Insuratex is a sound, viable reinsurance company which has been in business for many years, and which does a substantial amount of business outside its affiliated group of companies; and (3) each of the protections provided to the Plan and its participants and beneficiaries by PTE 79-41 will be met under the subject reinsurance transactions.

Notice to Interested Persons: Notice will be provided to interested persons in the manner agreed upon by the Department and the applicants within 30 days of the date of publication of this proposed exemption, and comments and requests for a public hearing must be received by the Department within 60 days of the date of publication.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)



**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 21st day of February, 1985.

Elliot I. Daniel,

Acting Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

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**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

[Notice (85-11)]

**Agency Report Forms Under OMB Review**

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made the submission. The NASA Procurement Regulation was previously cleared by OMB (2700-0041) through March 31, 1984, to allow application to contracts awarded prior to April 1, 1984.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by March 8, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:** Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

**Reports**

Title: NASA Procurement Regulation  
Type of Request: Reinstatement of a previously approved collection for which approval has expired  
Frequency of Report: On occasion, weekly monthly, quarterly, semi-annually, annually

Type of Respondent: Individuals, small and large businesses, state and local governments and non-profit institutions

Annual Responses: 239,069

Annual Reporting Hours: 5,805,000

**Abstract-Need/Users:** The contract forms and recordkeeping requirements used in collecting information from the public provide management data to NASA, allow contract monitoring and meet other Executive and Legislative Branch information levies. Applies only to contracts initiated prior to April 1, 1984.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-4572 Filed 2-25-85; 8:45 am]

BILLING CODE 7510-01-M

**NUCLEAR REGULATORY COMMISSION****Advisory Committee on Reactor Safeguards; Meeting Agenda**

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on March 7-8, 1985, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published in the *Federal Register* on January 23, 1985.

The agenda for the subject meeting will be as follows:

Thursday, March 7, 1985

8:30 A.M.-8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.-10:00 A.M.: Emergency Core Cooling Systems (Open)—The Committee will hear and discuss a report of its subcommittee regarding proposed changes in 10 CFR 50.46. Acceptance criteria for emergency core cooling systems for light water nuclear power reactors, and proposed changes in the upper head injection system for PWR plants. Representatives of the NRC staff will participate, as appropriate.

10:00 A.M.-12:15 P.M.: Evaluation of Nuclear Facility Accidents (Open)—The members will discuss proposed ACRS comments regarding the need for an NTSB-type organization to review nuclear power plant accidents and the ACRS role in accident evaluation.

1:15 P.M.-6:15 P.M.: Nine Mile Point Nuclear Plant, Unit 2 (Open/Closed)—The Committee will hear and discuss the report of its subcommittee and reports of representatives of the NRC Staff and the Applicant regarding the request for an operating license for this facility.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this facility



and details of the provisions for plant security.

#### Friday, March 8, 1985

**8:30 A.M.-9:30 A.M.: AEOD Activities (Open)**—The members will hear a briefing by the Director, AEOD regarding the activities of this office.

**9:30 A.M.-10:30 A.M.: Steam Generator Overfill (Open/Closed)**—The Committee will hear and discuss the report of its Subcommittee regarding the risks associated with steam generator overfill in nuclear power plants.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to this matter.

**10:30 A.M.-11:00 A.M.: Future ACRS Activities (Open)**—The members will discuss anticipated ACRS Subcommittee activities and items proposed for consideration by the full Committee.

**11:00 A.M.-12:00 Noon: Recent Events at Nuclear Facilities (Open/Closed)**—The members will hear and discuss reports from representatives of the NRC Staff regarding recent incidents which have occurred at nuclear facilities.

Portions of this session will be closed as necessary to discuss Proprietary Information applicable to the matters being discussed.

**1:00 P.M.-2:00 P.M.: Activities of ACRS Subcommittees (Open)**—The members of the Committee will hear and discuss recent ACRS Subcommittee activities with respect to NRC regulatory and safety-related matters, including items such as resolution of USI A-44, Station Blackout.

**2:00 P.M.-3:00 P.M.: Systematic Review of Nuclear Power Plants (Open)**—The members of the Committee will discuss proposed clarification of the ACRS report to the NRC dated July 18, 1984 on the proposed NRC severe accident policy statement.

**3:00 P.M.-6:00 P.M.: GE Standard Nuclear Power Station (Open/Closed)**—The members will hear and discuss reports of its Subcommittee and representatives of the NRC Staff and the General Electric Company regarding the FDA request for GESSAR-II (238 Nuclear Island).

Portions of this session will be closed as required to discuss Proprietary Information applicable to this type of facility and detailed provisions related to plant security.

#### Saturday, March 9, 1985

**8:30 A.M.-12:30 P.M.: Preparation of ACRS Reports (Open/Closed)**—The members will discuss proposed ACRS reports to NRC regarding matters discussed during this meeting.

Portions of this session will be closed as necessary to discuss Proprietary

Information applicable to the matters being considered and detailed security arrangements for the nuclear power plants.

**1:30 P.M.-2:15 P.M.: Redundancy/Diversity in Nuclear Power Plant Safety Systems (Open)**—The members will discuss proposed comments regarding the degree of redundancy/diversity provided in nuclear power plant safety systems.

**2:15 P.M.-3:00 P.M.: Nuclear Power Plant Design and Regulatory Requirements (Open/Closed)**—The members will hear reports from members who participated in the recent nuclear bilateral exchange meeting with representatives of Japanese nuclear industry and regulatory/developmental agencies.

Portions of this session will be closed as necessary to discuss information provided in confidence by a foreign source.

**3:00 P.M.-4:00 P.M.: Items of Safety and/or Regulatory Interest and/or Concern (Open)**—The members will discuss items of interest/concern related to the safety and regulation of nuclear facilities.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 3, 1984 (49 FR 193). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, R. F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss

safeguards information (5 U.S.C. 552b(c)(3)), Proprietary Information (5 U.S.C. 552b(c)(4)), and information provided in confidence by a foreign source (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3285), between 8:15 A.M. and 5:00 P.M. EST.

Dated: February 21, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85-4673 Filed 2-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

#### **Boston Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-35, issued to Boston Edison Company (the licensee), for operation of the Pilgrim Nuclear Power Station (the facility), located in Plymouth County, Massachusetts.

In accordance with the licensee's application dated February 1, 1985, as modified February 15, 1985, the proposed amendment would modify the Technical Specification (TS) to permit changes in the normal full power background trip level setting for the main steam line high radiation scram and isolation setpoints to accommodate a short-term test of operation with hydrogen injection into the reactor coolant. The purpose of the test is to enable Boston Edison Company to evaluate the feasibility and efficacy of hydrogen water chemistry as a mitigator of intergranular stress corrosion cracking (IGSCC) of BWR stainless steel piping at Pilgrim Station. Hydrogen injection will increase nitrogen (N-16) carryover in the main steam, which will increase background radiation in areas where main steam is found. The TS changes will permit an increase in the above setpoints prior to hydrogen injection at 20 percent or higher power levels and will require restoration of the pre-injection setpoints following the conclusion of injection, or



when power is decreased to below 20 percent of rated power.

Before issuance of the proposed license amendment, the Commission will have made findings as required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; (3) involve a significant reduction in a margin of safety. The determination was based upon the following considerations.

The only postulated event which takes credit for the main steam line high radiation (MSLRM) trip is the design basis control rod drop accident (CDRA). As stated in the Pilgrim Final Safety Analysis Report (FSAR), a CRDA is only of concern below 10% of rated power. Since the main steam line radiation monitor setpoint will be increased only for hydrogen injection at power levels of 20% or higher, the FSAR analysis and the design function of the MSLRM trip will remain valid. Therefore, this proposed Technical Specification change will not reduce plant safety margins.

If, due to a recirculation pump trip or other unanticipated power reduction event, the reactor drops below 20% rated power without setpoint readjustment, control rod withdrawal is prohibited until the necessary setpoint readjustment is made. This ensures that fuel failures of the type concerning the MSLRM are unlikely. In addition, the capability to monitor for fuel failures, which is the mission of the MSLR trip setpoint, will be maintained by: (1) The continued operability of the main steam radiation monitors, which provide signals to the reactor protection and primary containment isolation systems; (2) routine radiation surveys; (3) the performance of primary coolant water analyses; and (4) the continued operability of the Steam Jet-Air Ejector Off-Gas Radiation Monitor. Although the potential for error exists whenever instrument setpoints are adjusted, the resulting increase in the probability or consequences of accidents previously evaluated is considered insignificant because of Boston Edison's existing quality assurance program and

operating procedures as applied to instrument adjustments.

At the maximum planned hydrogen injection rate, approximately 18 SCFM, experience at Dresden Unit 2 and General Electric facilities indicates an expected increase of approximately three to eight times the normal main steam line background radiation level. Radiation protection practices will be performed during initial hydrogen injection based upon a pre-injection radiation (ALARA) review. During initial injection, special radiation level surveys will be performed and protective actions will be taken, as appropriate, to control all onsite personnel exposure. As data is gathered and assessed, steps will be taken to make changes to plant design and procedures deemed appropriate to minimize personnel exposure during the injection of hydrogen. Changes in gaseous effluent release rates for hydrogen injection are expected to be negligible due to the short decay times for N-16.

Based on the diverse means for maintaining the ability to detect fuel failures, on the efficacy of existing programs and procedures to assure accurate instrument setpoint adjustment, on both routine and exceptional ALARA actions to be taken prior to and during injection, on the ability of existing Technical Specifications to ensure that inimical control rod movement cannot occur below 20% power, and on the insignificant effect of increased N-16 activity on gaseous effluent release rates, the Commission's staff concludes that the proposed amendment will not significantly increase the probability or consequences of accidents previously considered, will not create the possibility of a new or different accident from any previously evaluated, and will not significantly reduce a safety margin. Therefore, the staff proposes to determine that the proposed amendment does not involve significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By March 27, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these



requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

Domenic B. Vassallo; petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to W.S. Stowe, Esq., Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment, dated February 1, 1985, as supplemented February 15, 1985, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02362.

Dated at Bethesda, Maryland, this 20th day of February, 1985.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2,  
Division of Licensing.

[FR Doc. 85-4676 Filed 2-25-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-335]

#### Florida Power and Light Co. (St. Lucie Plant, Unit No. 1); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR-67 that authorizes the operation of the St. Lucie Plant, Unit No. 1 (the facility) at a steady-state power level not in excess of 2700 megawatts thermal. The facility is a pressurized water reactor (PWR) located at the licensee's site in St. Lucie County, Florida. The license provides, among other things, that the facility is subject to all rules, regulations and orders of the Commission now or hereafter in effect.

II

10 CFR 50.48, "Fire protection," and Appendix R to 10 CFR Part 50, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," set forth certain specific fire protection features required to satisfy the General Design Criterion related to fire protection (Criterion 3, Appendix A to 10 CFR Part 50).

Section III.G of Appendix R requires fire protection of safe shutdown capability for structures, systems and components important to safe shutdown. Section III.O of Appendix R requires that the reactor coolant pumps be equipped with an oil collection system if the containment is not inerted during normal reactor operation. The collection system is required to be capable of collecting all the oil in a vented closed container.

III

Exemption requests submitted in 1981 and 1982 were superseded by the exemption requests submitted in letters dated April 12 and 25, 1983 except for one dealing with fire doors. This item was identified in the Safety Evaluation that was issued with Amendment 33 to Operating License No. DPR-67. The licensee's exemption request for these fire doors is contained in a letter dated March 19, 1981.

IV

#### Control Room (Fire Area F)

The licensee requested an exemption from Section III.G.3.b to the extent that it requires the installation of a fixed suppression system in the control room. The licensee will install alternative shutdown capability independent of the control room.

The control room is a continuously occupied space that houses controls and instruments necessary to remotely operate valves, pumps, motors, etc. required for plant operation. Most of these controls and instruments are mounted on centrally located panels. Redundant safe shutdown related cables are routed in the area to various control panels. Ionization type fire detectors are located in the control room. No automatic fire suppression capability is provided. However, portable fire extinguishers and standpipe hose stations are available for use in the control room.

Plant Technical Specifications require that the control room be continuously manned by the operations personnel. Most of these personnel are trained members of the fire brigade. Therefore, these personnel constitute a continuous



fire watch. The fuel load in the area is low. Manual suppression if a fire occurred would be prompt and effective; thus, a fixed suppression system would not enhance the fire protection in this area.

Based on the above evaluation, the staff concludes that the existing and proposed fire protection for the Control Room (Fire Area F) provides a level of fire protection equivalent to the technical requirements of Section III.G.3.b. Therefore, the exemption is granted.

#### *Reactor Containment Building (Fire Area K)*

The licensee requested an exemption from Section III.G.2.d to the extent that it requires the separation of redundant safe shutdown trains by a noncombustible radiant energy shield or by a horizontal separation of greater than 20 feet. This request concerns three locations: (1) Pressurizer cubicle, (2) annular region inside Containment, and (3) valve locations.

The Reactor Containment Building is separated from other plant areas by 3-hour fire rated barriers. The containment is one fire area with a large volume and a high ceiling. There are four floor levels inside containment at the 18 ft., 23 ft., 45 ft., and 62 ft. elevations. Normal access to the containment is controlled and limited.

Redundant safe shutdown trains inside containment include Power Operated Relief Valves (PORVs) and associated Block Valves, valves for shutdown cooling, letdown, charging, auxiliary spray and instrumentation with associated cabling.

The pressurizer cubicle is inaccessible during plant operation. All cables inside the pressurizer cubicle are routed in conduit. The PORVs and their Block Valves are located within the pressurizer cubicle.

The annular area inside containment contains shutdown cable trays that are located 15 feet to 55 feet above the basemat. All nonqualified IEEE-383 cables are covered with a fire retardant mastic material. Redundant cable trays are separated from each other by a horizontal distance of more than 7 feet. They are installed on separate elevations separated by approximately 25 feet. Combustible material in the area consists of cables and lubricating oil contained in various components. Portable fire extinguishers are available inside containment. Ionization smoke detectors are provided in selected locations.

The licensee proposes to install radiant energy shields between redundant trains in the cable

penetration area. In addition, the licensee committed to relocate one pressurizer level transmitter to achieve separation by a radiant energy shield. The licensee documented this commitment in a letter of December 14, 1983.

The technical requirements of Section III.G.2.d are not met in three locations inside containment because radiant energy shields are not provided to separate redundant trains.

Because of the configuration and location of the pressurizer cubicle within the containment and the restricted access of this zone during plant operation, an exposure fire involving the accumulation of significant quantities of transient combustible material is unlikely. Because of the limited amount of cable insulation in the pressurizer cubicle and because the majority of insulation is enclosed in conduit, a fire of sufficient magnitude to damage redundant cables or components inside the pressurizer cubicle is unlikely. The staff has reasonable assurance that one of the redundant trains will remain free of fire damage.

Because of the restricted access to the containment, an exposure fire from the accumulation to transient combustibles in the annular area inside containment would be limited in size and duration. The high ceiling and the open metal grating walkways in the annular area inside containment will allow hot gases from anticipated exposure fires to be safely dissipated. Because of the configuration of redundant cables in the annular area inside containment and the limited size and duration of anticipated fires, the staff has reasonable assurance that one train of redundant cables will be free of fire damage.

Based on the above evaluation, the existing protection and proposed modifications for the pressurizer cubicle, the annular area within the containment, and valve locations (Fire Area K) provide a level of protection equivalent to the technical requirements of Section III.G.2.d of Appendix R. Therefore, these exemptions are granted.

#### *Charging Pump Area (Fire Area N)*

The licensee requested an exemption from Section III.G.2.a of Appendix R to the extent that it requires separation of redundant trains by 3-hour fire rated barriers.

The Charging Pump Area is located in the Reactor Auxiliary Building at elevation -0.50 feet. The area is separated from other plant areas by 3-hour fire rated barriers. The ceiling height in the area is 20 feet.

The area contains three redundant charging pumps. The pumps are

installed on 10 foot centers with approximately 20 feet between the end pumps. The pumps are separated from each other and a common hallway by cubicles consisting of partial height (7 feet) 3-hour fire rated walls. The power cables for the Division B and C pumps are routed in conduit embedded in concrete up to the pump motors. The licensee has committed to enclose the power cables associated with the Division A pump located in the Division C pump cubicle in a one-hour fire rated barrier. In addition, the licensee has committed to relocate the Division B manual control station and associated wiring located in the common hallway to inside the Division B pump cubicle. The licensee documented these commitments in a letter of December 14, 1983.

The in-situ combustible in the area is limited to the lubricating oil, approximately 3 gallons per pump. The oil provides unpressurized lubrication. The oil has a flash point of greater than 450°F. The area does not contain hot surfaces that could ignite the oil. Fire protection in the area consists of early warning fire detection. Manual hose stations and portable fire extinguishers are available for use in this area.

The technical requirements of Section III.G.2.a are met because the three-hour fire rated wall does not completely separate the redundant shutdown components.

The in-situ fire load in the area is negligible and because of the limited accessibility to the area, the staff would not expect any significant quantities of transient combustibles to accumulate in these areas. Any postulated fire would therefore not propagate to any significant degree. For anticipated fires, heat and smoke would rise into the ceiling area, which would act as a heat sink; therefore, the damaging effects of convective heat from a fire would be dissipated in the ceiling area. The existing partial height 3-hour fire rated barrier between the charging pumps would effectively prevent any heat caused by the fire near one pump from damaging the redundant pumps that are located on the other side of the wall.

Because of the smoke detection system in the area, a fire, if one should occur, would be discovered early. This would assure the timely response of the plant fire brigade. Although some time delay is expected before eventual fire extinguishment, the staff has reasonable assurance that the existing fire wall will prevent components from at least one shutdown division from sustaining fire damage.



Based on the above evaluation, the existing protection combined with the proposed modifications and commitments provides a level of fire protection in the Charging Pump Area (Fire Area N) equivalent to the technical requirements of Section III.G.2.a; therefore, the exemption is granted.

#### *Intake Cooling Water Area (Fire Area R-R)*

The licensee requests an exemption from Section III.G.2.b. to the extent that it requires the installation of an automatic fire suppression system in the area.

This is an outdoor area that contains the Intake Structure, Chlorine Building and a storage building. The concrete intake structure deck elevation is 16.5 feet. The safe shutdown related components in this area are the three intake cooling water (ICW) pumps. The three intake cooling water pumps are on approximately 13 foot centers. These pumps rest on concrete pedestals approximately 31 inches high. All three pumps are enclosed in a common steel tornado missile barrier approximately 20 feet high, 9 feet wide and 37 feet long. This tornado missile barrier is surrounded by grating that drains to the Intake Canal below. Openings at the top and bottom of the missile barrier allow for free convection cooling of ICW pump motors.

There are four circulating water pumps on 14 foot centers. Two screen wash pumps on approximately 6 foot centers are located 4.5 feet south of the southernmost intake cooling water pump. A separation of approximately 6 feet exists between a circulating water pump and the closest ICW pump. A 6-inch curb surrounding each circulating water pump directs any leakage from the respective pump away from the ICW pump enclosure and into the deck grating.

Safe shutdown related cables, associated with the ICW pumps, are routed in three separate manhole systems, each containing the cables for one ICW pump. The manholes are located a minimum of 14 feet from the circulating water pumps. The cables from the manholes to the ICW pump motor terminal boxes are routed in galvanized steel conduit and are encased in concrete from the manholes up to the intake structure deck.

The combustibles in the area consist of 235 qts. of lubricating oil in each of the four circulating water pump motors, 53 qts. in each of the three intake cooling water pump motors, and 4 qts. in each of the two screen wash pump motors. The oil provides unpressurized lubrication. The oil has a flash point of

greater than 450°F. This area does not contain hot surfaces to ignite the oil. The licensee has installed early warning fire detection in the area that will initiate an alarm locally and in the Control Room. This is documented in a letter of September 18, 1983. The area is provided with portable fire extinguishers and manual hose stations. The fire detection system will provide reasonable assurance that a fire will be discovered at an early stage before significant damage results.

This area does not comply with Section III.G.2.b of Appendix R because an automatic suppression system is not installed in the area.

Because of the low fire load, the open area, the separation of the redundant components and the early warning fire detection system, it is the staff's opinion that any postulated fire in the area would be extinguished within a short time. Although a time delay is anticipated between the receipt of the initial fire alarm and the arrival of the fire brigade, the staff has reasonable assurance that one train of equipment will remain free of fire damage.

Based on the above evaluation, the existing fire protection combined with the licensee's commitments provides a level of fire protection in the Intake Cooling Water Area (Fire Area R-R) equivalent to the technical requirements of Section III.G.2.b; therefore, the exemption is granted.

#### *Steam Trestle Area (Fire Area S-S)*

The licensee requested an exemption from Section III.G.2.b to the extent that it requires the installation of an automatic fire suppression system in the area.

The Steam Trestle Area is an outdoor area located on the west side of the containment at elevation 19.0 feet. The area includes the Auxiliary Feedwater Pumps (AFW) 1A, 1B, and 1C and their associated cabling and valves. The AFW pumps are bounded on three sides by 1-inch thick steel plates and by the Containment Building on the remaining side. The two electrically driven AFW pumps (1A and 1B) are separated from the turbine driven AFW pump 1C by concrete floodwalls and two 1-inch thick steel missile shields.

The in-situ combustibles in the area are limited to the lubricating oil contained in the pumps' motor housing. The oil has a flash point of greater than 450°F. Manual hose stations and portable fire extinguishers are available for use in this area. The licensee has committed to install early warning fire detectors in the area. The licensee documented this commitment in a letter dated December 14, 1983.

This area does not comply with Section III.G.2.b of Appendix R because an automatic suppression system is not installed in the area.

The area is outdoors and open without a ceiling. The arrangement will prevent the accumulation of hot stratified gases from anticipated fires. Redundant cables and equipment are separated by 28 feet, free of intervening combustibles. The fire detection system consisting of detectors by each pump, which the licensee has committed to install in the area, will provide reasonable assurance that a fire will be discovered at an early stage before significant damage results. Because of the low in-situ fuel load, available manual fire fighting equipment, and fire brigade training, it is the staff's opinion that any postulated fire in the area would not be beyond the capabilities of the fire brigade to extinguish within a short time span. Although a time delay is anticipated between the receipt of the initial fire alarm and the arrival of the fire brigade, the separation of redundant trains by missile shield walls and 28 feet, and the location of the trains outdoors will provide sufficient passive fire protection until the fire is extinguished.

Based on the above evaluation, existing fire protection combined with the licensee's commitments provides a level of fire protection in the Steam Trestle Area (Fire Area S-S) equivalent to the technical requirements of Section III.G.2.b of Appendix R; therefore the exemption is granted.

#### *Component Cooling Pumps (Fire Area U-U)*

The licensee requested an exemption from Section III.G.2.b to the extent that it requires the installation of automatic fire suppression and fire detection systems throughout the area.

The Component Cooling Water Area is an outdoor area located at elevation 28.5 feet just north of the refueling water tank. It includes the three component cooling water (CCW) pumps, the CCW heat exchangers and associated cables, valves, and piping.

The CCW pumps are mounted on 11 feet high concrete pedestals that extend up to a metal grating at elevation 23.5 feet. The area below the grated platform contains piping in a dike at elevation 12.0 feet. Each pump is enclosed by a steel missile barrier. There is approximately 12 feet between adjacent CCW pumps. CCW system control valves and motor operated valves are located just under the metal grating surrounding the CCW pumps. Power and control cables for each pump are



imbedded in concrete, with only a short exposed section at each pump.

The combustible load in this area consists of approximately 15 gallons of lubricating oil and four pounds of grease contained within the pump motor housings. The oil provides unpressurized lubrication. The oil has a flash point of greater than 450°F. This area does not contain hot surfaces to ignite the oil. Manual hose stations and portable fire extinguishers are available for use in this area. The licensee committed to install early warning fire detection at each CCW pump. The licensee documented this commitment in a letter of December 14, 1983.

The area does not comply with Section III.G.2.b because automatic suppression systems are not installed and the fire detection system is not throughout the area.

The fire detection system will provide reasonable assurance that a fire will be discovered at an early stage before significant damage results. The area is open without ceiling or walls. This arrangement will prevent the accumulation of hot stratified gases from anticipated fires. Because of the low fire load, the open area, and the separation of redundant components, it is the staff's opinion that any postulated fire in the area would not be beyond the capabilities of the fire brigade to extinguish within a short time span. Although a time delay is anticipated between the receipt of the initial fire alarm and the arrival of the fire brigade, the staff has reasonable assurance that one train of components will remain free of fire damage.

Based on the above evaluation, the existing fire protection combined with the licensee's commitments provides a level of fire protection in the Component Cooling Pump Area (Fire Area U-U) equivalent to the technical requirements of Section III.G.2.b; therefore, the exemption is granted.

#### *Diesel Oil Storage Tank Area (Fire Area T-T)*

The licensee requested an exemption from Section III.G.2.b to the extent it requires the installation of early warning fire detection and an automatic fire suppression system.

Fire Area (T-T) is the Diesel Oil Storage Tank area located at elevation 19.0'. It includes 2 diesel oil storage tanks, diesel oil transfer pumps, and associated valves and piping. Each tank is surrounded by a 5.5 feet high concrete wall and holds about 20,000 gallons of diesel fuel. The tanks are built in accordance with API standards and meet the requirements of the National Fire Code. The fuel oil transfer pumps

are located in tornado protected concrete enclosures, one north and one south of the diesel oil storage tanks. These enclosures are approximately 60 feet apart. The in-situ combustibles in this area consist of approximately 20,000 gallons of diesel oil contained in each tank. Portable fire extinguishers and manual hose stations are provided in the area.

This area does not comply with Section III.G.2.b because automatic suppression and detection systems are not provided. The diesel oil storage tanks are separated by 21 feet and a dike capable of containing the entire contents of the tanks. The separation of tanks is in compliance with NFPA Std. 30, "Flammable and Combustible Liquids Code" for the spacing of adjacent, above-ground storage tanks. NFPA Std. 30 does not recommend a fire extinguishing system for tanks of this size that are installed in compliance with applicable spacing requirements. Because of the separation distance and diking between tanks, it is the staff's opinion that there is reasonable assurance that one train will be maintained free of fire damage. The installation of an automatic suppression and detection system would not significantly enhance the level of fire protection in this area.

Based on the above evaluation, the staff finds that the existing protection in the diesel oil storage area provides a level of fire protection equivalent to the technical requirements of Section III.G.2.b; therefore, the exemption is granted.

#### *Duct Penetration In 3-Hour Fire Rated Barriers*

At the time the fire protection rule became effective, duct penetrations through fire rated walls was an open item in the fire protection safety evaluation report for St. Lucie 1. Because this SER open item was not resolved prior to the effective date of the fire protection rule for operating nuclear plants, February 17, 1981, it is subject to the applicable provisions of Appendix R to 10 CFR Part 50. As a result, to the extent that the licensee's proposals to resolve the open item does not comply with the rule, these proposals are considered to represent exemption requests from Appendix R.

The licensee has requested exemptions from providing 3-hour fire rated dampers in ducts that penetrate 3-hour fire rated barriers with separate redundant trains in the following areas:

a. 1 duct penetrating the wall between the Pipe Tunnel (Fire Area J) and the Division A Electrical Penetration Area (Fire Area A).

b. 1 duct penetrating the wall between the Pipe Tunnel (Fire Area J) and the ECCS Heat Exchanger Room (Fire Area L).

a. *Duct Penetration Between the Pipe Tunnel (Fire Area J) and Division A Cable Penetration Area (Fire Area L).*—The Division A Electrical Penetration Area and the Pipe Tunnel are located at EL 19.5 feet in the northwest section of the Reactor Auxiliary Building. Early warning fire detection is provided in the Division A cable penetration area. Fire extinguishers and hose stations are provided for use in the area. The combustible fuel loading for the Division A Electrical Penetration Area is high; however, all cabling in the area has been coated with a flame retardant coating or is qualified to IEEE-383. The fuel load in the Pipe Tunnel is negligible.

The duct penetration is located in the east wall approximately 18 feet above the floor. The penetration is approximately 2 square feet in size. The Pipe Tunnel is a high radiation area and access is limited. The Pipe Tunnel contains valves required for cold shutdown.

b. *Duct Penetration Between the Pipe Tunnel (Fire Area J) and ECCS Heat Exchanger Room (Fire Area L).*—The Heat Exchanger Room (Fire Area L) is located on elevation -0.50 ft. of the Reactor Auxiliary Building. Early warning fire detection is provided in the ECCS heat exchanger room. Fire extinguishers and hose stations are provided in the immediate area. The fuel load in both areas is negligible. The licensee has committed to install 3-hour fire rated dampers in all duct penetrations with the exception of a penetration between the Pipe Tunnel and the ECCS Heat Exchanger Room. The licensee documented this commitment in a letter of December 14, 1983.

The duct penetration in question is located in the north wall approximately 13 feet above the floor. The Pipe Tunnel that the duct enters is a high radiation area and access is limited. The only safe shutdown equipment in the pipe tunnel are valves required for cold shutdown. The licensee indicated that the valves can be manually operated to their correct cold shutdown position in the event of a fire.

The technical requirements of Section III.G.2.a are not met in these areas because of the unprotected penetrations in the 3-hour fire rated walls.

Because the fuel load in the Pipe Tunnel is negligible and access to the tunnel is limited due to high radiation levels, a fire in this area would be small and would not present a threat to the



redundant components. A fire in the Division A cable penetration area would involve only Division A systems. Because the cables are coated with a fire retardant coating or qualified to IEEE-383, any postulated fire would tend to propagate slowly and with initially low heat generation. The damage-producing effects of such a fire, i.e., the radiant and convective heat and other products of combustion, would be confined to the area of fire origin by the fire rated walls. A small quantity of smoke and hot gases would be expected to propagate beyond the walls into the Pipe Tunnel because of the unprotected penetrations. However, the unprotected penetrations are located away from the redundant shutdown systems. Therefore, hot gases passing through the penetrations would not affect components or cabling of redundant divisions.

Because of the configuration, the area-wide fire detection capability and the accessibility of the areas within the Reactor Auxiliary Building, the staff has reasonable assurance that one safe shutdown system train will remain free of fire damage.

Based on the above evaluation, the staff concludes that the existing fire protection in the Division A Cable Penetration Area (Fire Area A), Pipe Tunnel (Fire Area J), and the ECCS Heat Exchanger Room (Fire Area L) provides an acceptable level of safety equivalent to that provided by Section III.G.2.a and, therefore, the exemptions are granted.

#### *Penetrations in 3-Hour Fire Rated Barriers*

The licensee requested an exemption from providing 3-hour fire rated doors in doorways in a 3-hour fire rated barrier that separates redundant trains.

The barrier separates the Personnel Area (Fire Area C) from the Hold Up Tank Area (Fire Area E). The barrier is located on elevation 19.50 feet of the Reactor Auxiliary Building. The unprotected openings in the fire barrier are two 3 feet by 7 feet passageways between the two areas. The passageways are protected by a concrete "T" shaped labyrinth installed in Fire Area C. The fuel load in the vicinity of the opening in both areas is negligible. Fire protection in the areas is provided by early warning fire detection. Manual hose stations and portable fire extinguishers are available for use in these areas.

The technical requirements of Section III.G.2.a are not met in these areas because of the unprotected openings in the 3-hour fire rated barrier.

If a fire occurred in one of these areas, a small quantity of smoke and hot

gasses would be expected to propagate through the unprotected openings. Because the in-situ combustibles in the vicinity of the unprotected openings are minimal and because the safe shutdown systems are located away from the openings, the redundant divisions in the other areas would not be threatened. Because these areas are provided with early warning fire detection and because they are located in an area of the Auxiliary Building that is easily accessible to the fire brigade, the staff has reasonable assurance that one safe shutdown system train will be free of fire damage.

Based on the above evaluation, the staff concludes that the existing fire protection in the Personnel Area (Fire Area C) and the Hold Up Tank Area (Fire Area E) provides an acceptable level of safety equivalent to that provided by Section III.G.2.a and, therefore, the exemption is granted.

#### *Penetrations in 3-Hour Fire Rated Floor Ceiling Assemblies*

The license has requested exemptions from sealing two hatch openings in 3-hour fire rated barriers separating redundant trains in the Reactor Auxiliary Building.

The hatch openings are between elevations -0.50 feet and 19.50 feet in the Reactor Auxiliary Building. One hatch opening is located between column lines RAJ and RA5. The other hatch is located between column lines RA4 and RAC. Steel plates, 1/4 inch thick, are used to cover the hatch opening at elevation 19.5 feet. The openings are protected with early warning detection. There are negligible combustibles in the immediate area of the hatch openings. The licensee committed to install an automatic water curtain consisting of sidewall sprinkler heads to provide protection for each hatch opening. The licensee documented this commitment in a letter of December 14, 1983.

The technical requirements of Section III.G.2.a are not met in these areas because 3-hour penetration seals have not been provided for openings in 3-hour fire rated floor/ceiling assemblies used to separate redundant trains.

The in-situ fuel load in the immediate area of each hatch opening is negligible; however, unanticipated circumstances could result in the presence of transient combustibles creating significantly higher levels of combustibles in these areas. The automatic water curtain will provide active fire protection to aid in the protection of the hatch openings. Because (1) the hatch openings are covered with noncombustible covers, (2) automatic fire detection and fire

suppression have been provided, and (3) the concentration of in-situ combustibles is negligible beneath each hatch opening, the staff finds that the installation of 3-hour penetration seals in lieu of the hatch covers would not significantly increase the level of fire safety.

Based on the above evaluation, the existing protection in the Reactor Auxiliary Building elevations -0.5 ft. and 19.5 ft. and commitments provide a level of fire protection equivalent to the technical requirements of Section III.G.2.a; therefore, the exemptions are granted.

#### *Oil Collection System for Reactor Coolant Pumps*

An exemption is requested from section III.0 to the extent it requires an oil collection tank sized to hold the lube oil inventory of all three Reactor Coolant Pump (RCP) motors.

The unit has four reactor coolant pumps with an oil collection system that drains to a vented closed collection tank. The quantity of lubricating oil in each pump is 190 gallons. The capacity of the oil collection tank is 225 gallons. The components have been designed so that they are capable of withstanding a safe shutdown earthquake (SSE).

The collection tank is arranged such that, if a failure of more than one RCP motor lube system occurred, the oil collection tank would overflow onto the lower containment floor. The lubricating oil used in the RCP motors has a flash point of approximately 450 °F. There are no ignition sources at the floor level of the lower containment.

The RCP motor lube oil system does not comply with Section III.0 because the oil collection tank is not sized to contain the entire lube oil system inventory.

The oil collection tank is provided with sufficient capacity to hold the total lube oil inventory of one reactor coolant pump with margin and is designed so that any overflow will be drained to a safe location and will not present an exposure fire hazard to, or otherwise endanger, safety related equipment. The staff agrees with the licensee that this combination of features is acceptable.

Based on the above evaluation, the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirements of Section III.0 and, therefore, the exemption is granted.

#### *Fire Doors*

By letter dated March 19, 1981 the licensee requested an exemption for six



watertight doors that are not approved fire doors.

The licensee has based this exemption request on the test report dated February 1982, "Fire Evaluation of Doors and a Water Curtain," Southwest Research Institute project number 01-6763-201. This report shows that watertight doors of the type proposed, successfully passed a 3-hour fire test conducted in accordance with test method ASTM E-119, a acceptable method of demonstrating fire resistance.

The technical requirements of Section III.G.2 a are not met because the watertight doors are not approved fire doors.

The staff has evaluated the February 1982 test report and the supplemental information provided and agrees that the proposed alternative provides a level of fire protection equivalent to the level of protection required by the technical requirements of II.G.2.a; therefore, the exemption is granted:

#### Summary

Based on the staff's evaluation, the following exemptions are granted:

1. Control Room (Fire Area F);
2. Reactor Containment Building (Fire Area K);
3. Charging Pump Area (Fire Area N);
4. Intake Cooling Water Area (Fire Area R-R);
5. Steam Trestle Area (Fire Area S-S);
6. Component Cooling Pump (Fire Area U-U);
7. Diesel Oil Storage Tanks (Fire Area T-T);
8. Penetrations In Three Fire Rated Barriers (Three Exemptions);
9. Steel Hatches (Two Exemptions);
10. Oil Collection System; and
11. Fire Doors.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the exemptions are authorized by law and will not endanger life or property or common defense and security and are otherwise in the public interest and hereby grants exemptions from the requirements of Subsections III.G and III.O of Appendix R to 10 CFR Part 50 to the extent discussed in Section IV above.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the Exemption will have no significant impact on the environment (49 FR 45675).

Dated at Bethesda, Maryland, this 21st day of February, 1985.

For the Nuclear Regulatory Commission,  
Hugh L. Thompson,

Director, Division of Licensing

[FR Doc. 85-4677 Filed 2-25-85; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF THE FEDERAL REGISTER

### Agreements Between the American Institute in Taiwan and the Coordination Council for North American Affairs

**AGENCY:** Office of the Federal Register (NARS).

**ACTION:** Notice of availability of agreements.

**SUMMARY:** The American Institute in Taiwan has concluded a number of agreements with the Coordination Council for North American Affairs in order to maintain cultural, commercial and other unofficial relations between the American people and the people on Taiwan. The Director of the Federal Register is publishing the list of these agreements on behalf of the American Institute in Taiwan in the public interest.

**SUPPLEMENTARY INFORMATION:** Cultural, commercial and other unofficial relations between the American people and the people on Taiwan are maintained on a nongovernmental basis through the American Institute in Taiwan (AIT), a private nonprofit corporation created under the Taiwan Relations Act (Pub. L. 96-8; 93 Stat. 14). The Coordination Council for North American Affairs (CCNAA) is its nongovernmental Taiwan counterpart.

Under section 12(a) of the Act, agreements concluded between the AIT and the CCNAA are transmitted to the Congress, and according to sections 8 and 10(a) of the Act, such agreements have full force and effect under the law of the United States.

The texts of the agreements are available from the American Institute in Taiwan, 1700 North Moore Street, 17th floor, Arlington, Virginia 22209. For further information contact Joseph Kyle at this address, telephone (703) 525-8474.

Following is a list of agreements between AIT and CCNAA which were in force as of December 31, 1984.

#### Atomic Energy

Agreement relating to cooperation in the Probabilistic Risk Analysis (PRA) Program for the Kuosheng Nuclear Power Plant in Taiwan. Exchange of letters at Arlington and Washington August 23, 1982 and January 27, 1983; entered into force January 27, 1983.

Arrangement for the exchange of technical information and cooperation in regulatory and safety matters. Exchange of letters at Arlington and Bethesda May 12 and August 3, 1983; entered into force August 3, 1983.

Agreement relating to participation in severe nuclear accident research

programs, signed at Washington October 12, 1984; entered into force October 12, 1984.

#### Aviation

Air transport agreement, with exchange of letters. Signed at Washington March 5, 1980; entered into force March 5, 1980.

Memorandum of agreement relating to aeronautical equipment and services, with annexes. Signed at Arlington and Washington September 24 and October 23, 1981; entered into force October 23, 1981.

#### Educational and Cultural

Implementing agreement financing certain educational and cultural exchange programs. Exchange of letters at Taipei April 14 and June 4, 1979; entered into force June 4, 1979.

Agreement concerning the Taipei American School, with annex. Signed at Taipei February 3, 1983; entered into force February 3, 1983.

#### Energy

Agreement relating to cooperation in electrical energy. Letters signed at Arlington and Washington June 24 and 28, 1983; entered into force June 28, 1983.

#### Fisheries

Agreement concerning fisheries off the coasts of the United States, with annex and agreed minutes. Signed at Washington June 7, 1982; entered July 1, 1982.

#### Privileges and Immunities

Agreement relating to privileges and immunities of courier system. Signed at Washington and Arlington December 31, 1979 and January 7, 1980; entered into force January 7, 1980.

Agreement on privileges, exemptions and immunities. Signed at Washington October 2, 1980; entered into force October 2, 1980.

#### Safety at Sea

Agreement relating to safety of life at sea. Exchange of letters at Arlington and Washington August 17 and September 7, 1982; entered into force September 7, 1982.

#### Scientific Cooperation

Agreement relating to cooperation in science and technology. Exchange of letters at Arlington and Washington September 4, 1980; entered into force September 4, 1980.

#### Security of Information

Protection of information agreement. Signed at Arlington and Washington September 15, 1981; entered into force September 15, 1981.



**Tonnage**

Agreement relating to tonnage measurement of ships. Exchange of letters at Arlington and Washington May 13 and 26, 1983; entered into force May 26, 1983.

**Trade and Commerce**

Agreement on trade matters, with annexes. Exchange of letters at Arlington and Washington October 24, 1979; entered into force October 24, 1979.

Agreement implementing tariff reductions on a Most Favored Nation basis, with annexes. Exchange of letters at Arlington and Washington December 31, 1981; entered into force December 31, 1981; effective September 30, 1982.

Agreement relating to trade in cotton, wool and man-made fiber textiles and textile products, with annexes. Signed at Washington November 18, 1982; entered into force November 18, 1982; effective January 1, 1982.

Agreement amending the agreement on trade in cotton, wool and man-made fiber textiles and textile products. Exchanges of letters at Arlington and Washington October 27 and November 4, 1983; December 19, 1983 and January 9, 1984; July 13 and 16, 1984.

**Weather Observations**

Agreement relating to provision to AIT of ionospheric weather observations by CCNAA. Signed at Taipei November 28, 1980; entered into force November 28, 1980.

Agreement modifying the agreement of November 28, 1980 relating to provision to AIT of ionospheric weather observations by CCNAA. Signed at Taipei October 1, 1983; entered into force October 1, 1983.

Dated: January 23, 1985.

Joseph B. Kyle,  
Corporate Secretary, American Institute in Taiwan.

Dated: February 21, 1985.

John E. Byrne,  
Director, Office of the Federal Register.  
[FR Doc. 85-4381 Filed 2-25-85; 8:45 am]  
BILLING CODE 1505-01-M

**DEPARTMENT OF STATE****Determination to Authorize Continuation of Certain Assistance for Haiti**

Pursuant to section 540 of the Foreign Assistance and Related Programs Appropriations Act, 1985 (as enacted by Pub. L. 98-473), and the authority vested in me by Executive Order 12163, as amended, I hereby determine that the Government of Haiti:

(1) Is continuing to cooperate with the United States in halting illegal

emigration to the United States from Haiti;

(2) Is cooperating fully in implementing United States development, food, and other economic assistance programs in Haiti (including programs for prior fiscal years); and

(3) Is making progress toward improving the human rights situation in Haiti and progress toward implementing political reforms which are essential to the development of democracy in Haiti, such as progress toward the establishment of political parties, free elections and freedom of the press.

This determination shall be reported to the Congress immediately and shall be published in the Federal Register.

Dated: January 28, 1985.

George P. Shultz,  
Secretary of State.  
[FR Doc. 85-4643 Filed 2-25-85; 8:45 am]  
BILLING CODE 4710-29-M

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Radio Technical Commission for Aeronautics (RTCA); Special Committee 157—User-Selectable Navigational Data Base; Meeting**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of RTCA Special Committee 157 on User-Selectable Navigational Data Base to be held on March 19-21, 1984 in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's Introductory Remarks; (2) Approval of Minutes of Meeting Held on November 7-9, 1984; (3) Review Activities of the Working Group on Processing and Documentation; (4) Review Activities of the Working Group on Source Enhancements; (5) Presentation on Procedures used in Europe for Developing Navigational Data Bases; (6) Working Groups Meet in Separate Sessions; (7) Working Group Progress Reports; (8) Assignment of Tasks; and (9) Other Business.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, D.C. 20005; (202) 682-0266. Any member of the public may present a

written statement to the committee at any time.

Issued in Washington, D.C., on February 19, 1985.

Karl F. Bierach,  
Designated Officer.  
[FR Doc. 85-4571 Filed 2-25-85; 8:45 am]

BILLING CODE 4910-13-M

**DEPARTMENT OF DEFENSE****Department of the Army****Army Medical Research and Development Advisory Committee, Subcommittee on Vision and Laser Bioeffects; Partially Closed Meeting**

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix, sections 1-15), announcement is made of the following Subcommittee meeting:

Name of Committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Vision and Laser Bioeffects.

Date of meeting: March 11, 1985.

Time and place: 0900 hours, Letterman Army Institute of Research, Presidio of San Francisco, CA.

**Proposed agenda**

This meeting will be open to the public from 0900 to 1300 hours on March 11 for the administrative review and discussion of the scientific research program of the Letterman Army Institute of Research. Attendance by the public at open sessions will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), US Code, Title 5 and sections 1-15 of Appendix, the meeting will be closed to the public from 1315 to 1700 hours on March 11, for the review, discussion and evaluation of individual programs and projects conducted by the US Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mr. R.A. McHenry, Research Contract Management, Letterman Army Institute of Research, Presidio of San Francisco, CA 94129-6800 (415/561-4367) will furnish summary minutes, roster of Subcommittee members and substantive program information.

Paul F. Darnauer,  
Colonel, MSC, Chief of Staff.  
[FR Doc. 85-4851 Filed 2-25-85; 11:02 am]  
BILLING CODE 3710-08-M



# Sunshine Act Meetings

Federal Register

Vol. 50, No. 38

Tuesday, February 28, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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### FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Special Meeting

**DATES AND TIMES:** The special meeting is scheduled to start at 8:00 a.m., Monday, March 4 and continue to 12:00 Noon on Thursday, March 7, 1985.

**ADDRESS:** Federal Farm Credit Board Special Meeting, Marriott's Santa Barbara Biltmore, Santa Barbara, California.

**FOR FURTHER INFORMATION CONTACT:** Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090, (703) 883-4003.

**SUPPLEMENTARY INFORMATION:** A special meeting of the Federal Farm Credit Board to discuss planning matters is scheduled to be held at the Marriott's Santa Barbara Biltmore, Santa Barbara, California, from March 4 through March 7, 1985.

Dated: February 22, 1985.

Donald E. Wilkinson,  
Governor.

[FR Doc. 85-4710 Filed 2-22-85; 11:15 am]

BILLING CODE 6705-01-M

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### INTERNATIONAL TRADE COMMISSION

**TIME AND DATE:** 11:00 a.m., Wednesday, March 13, 1985.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
  - (a) Certain expansion tanks for closed water systems (Docket No. 1155).
  - (b) Certain automatic bowling machine printed circuit control boards (Docket No. 1157).

5. Investigation 731-TA-240, 241 [Preliminary] (Photo albums from Hong Kong and the Republic of China)—briefing and vote.

6. Any items left over from previous agenda.

### CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,  
Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4760 Filed 2-22-85; 4:01 pm]

BILLING CODE 7020-02-M

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### INTERNATIONAL TRADE COMMISSION

[USITC SE-85-12]

**TIME AND DATE:** Friday, March 8, 1985, 11:00 a.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Investigation 731-TA-239 [Preliminary] (Rock Salt from Canada)—briefing and vote.

### CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,  
Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4761 Filed 2-22-85; 4:01 pm]

BILLING CODE 7020-02-M

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### INTERNATIONAL TRADE COMMISSION

[USITC SE-85-11]

**TIME AND DATE:** Monday, March 4, 1985, 2:00 p.m.

**PLACE:** Room 117, 701 E Street, NW., Washington, D.C. 20436.

**STATUS:** Open to the public.

### MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and Complaints.
5. Investigations 731-TA-187 [Final] (Potassium chloride from the U.S.S.R.)—briefing and vote.
6. Any items left over from previous agenda.

### CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason,  
Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-4762 Filed 2-22-85; 4:01 pm]

BILLING CODE 7020-02-M

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### NATIONAL TRANSPORTATION SAFETY BOARD

[NM-85-4]

**TIME AND DATE:** 9 a.m., Tuesday, March 5, 1985.

**PLACE:** NTSB Board Room, Eighth Floor, 800 Independence Ave., SW., Washington, D.C. 20594.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report:* Air Illinois Hawker Siddeley HS 748-2A, N748LL, near Pinckneyville, Illinois, October 11, 1983.
2. *Aircraft Accident Report:* USAir, Inc., McDonnell Douglas DC9-31, N964VJ, Detroit, Michigan, June 13, 1984.
3. *Recommendation to Federal Aviation Administration* regarding wind shear training and cockpit management.
4. *Aircraft Accident Report:* Air Continental, Inc., Gates Learjet 23, N101PP, Windsor Locks, Connecticut, June 4, 1984.
5. *Highway Accident Report:* Church Bus Loss of Control on Long Steep Grade on State Route 155 near Wofford Heights, California, July 7, 1984.
6. *Marine Accident Report:* Collision of the U.S. Towboat ANN BRENT and Tow with the Greek ship MANTINIA, Mile 150, Lower Mississippi River, June 11, 1984.
7. *Railroad Accident Report:* Derailment of Amtrak Train No. 81, The Silver Star, on the Seaboard System Railroad, Kittrell, North Carolina, March 5, 1984.

### CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming (202) 382-6525

Ray Smith,

Federal Register Liaison Officer.

February 12, 1985.

[FR Doc. 85-4713 Filed 2-22-85; 10:44 am]

BILLING CODE 7530-01-M

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### SECURITIES AND EXCHANGE COMMISSION

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT:

**STATUS:** Open meeting.

**PLACE:** 450 Fifth Street, NW., Washington, D.C.



**DATE PREVIOUSLY ANNOUNCED:** Monday, February 11, 1985.

**CHANGE IN THE MEETING:** Additional item.

The following additional item was considered at an open meeting scheduled for Thursday, February 21, 1985, at 2:30 p.m.

Consideration of whether to grant the application of New Orleans Public Service Inc. ("NOPSI"), and its parent Middle South Utilities, Inc. ("MSU"), a registered holding company, seeking approval for the sale by NOPSI of up to \$40 million in principal

amount of its first mortgage bonds; up to \$20 million of its serial preferred stock, par value \$100; and for the issuance and sale to MSU of up to 4 million share of NOPSI's common stock, \$10 par value, at a price of \$10 per share. This proposal was noticed by the Commission on January 4, 1985 (HCR No. 23583), and the City of New Orleans filed comments, without asking for a hearing. For further information, please contact John P. Brandenburg at (202) 272-7340.

Chairman Shad and Commissioners Treadway, Cox and Peters determined that Commission business required the

above change and that no earlier notice thereof was possible.

At times changes in commission priorities require alterations in the scheduling of meeting items. For Further Information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Angela Hall at (202) 272-3085.

Dated: February 21, 1985.

John Wheeler,

Secretary.

[ER Doc. 85-4720 Filed 2-22-85; 11:29 am]

BILLING CODE 5010-01-M



# Registered Federal Report

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Tuesday  
February 26, 1985

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## Part II

### Department of Education

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34 CFR Part 674

National Direct Student Loan Program;  
Proposed Rule



## DEPARTMENT OF EDUCATION

## 34 CFR Part 674

## National Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend Subpart C of the National Direct Student Loan (NDSL) Program regulations. Based on the Secretary's review of current regulations in an effort to comply with the requirements of Executive Order 12291 and its overall objective to reduce regulatory burdens, and as a result of recent statutory amendments regarding required loan disclosures, the Secretary proposes these amendments. These amendments would streamline the loan collection process, reorganize current regulations, and increase the effectiveness of current collection efforts in light of the Department's experience and the comments of the General Accounting Office regarding institutional loan management practices.

**DATES:** Comments must be received on or before April 12, 1985.

**ADDRESS:** Comments should be addressed to Margaret O. Henry, Office of Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, S.W., (Room 4018, ROB-3), Washington, D.C. 20202.

**FOR FURTHER INFORMATION CONTACT:** Kathy S. Gause or Roxanne Flanagan, telephone (202) 245-9720.

**SUPPLEMENTARY INFORMATION:****Background**

Under the National Direct Student Loan Program, Title IV-E of the Higher Education Act of 1965, as amended, institutions of higher education may receive Federal funds to make loans to students. Subpart C of the NDSL regulations requires each institution which participates in the NDSL program to inform NDSL borrowers of their rights and responsibilities, to attempt to collect from defaulted borrowers by using its own personnel or commercial collection firm, and, under certain conditions, to sue defaulted borrowers. There has been a growing concern about the number of borrowers who have failed to repay their NDSLs. Studies of the NDSL program indicate that institutions must strengthen collection efforts. Therefore, the Secretary proposes the following revisions to Subpart C of the NDSL regulations, in an effort to both strengthen the due diligence requirements and to reduce regulatory burden on institutions.

**Summary of Major Changes****A. Format**

The format of Subpart C has been substantially reorganized to make it more orderly and easily readable. Additionally, several headings have been changed to make particular subjects or topics easier to locate throughout the regulations. The length of these regulations has been reduced and the contents are reordered.

**B. Due Diligence—General Requirements**

1. *General.* The Secretary is proposing that in collecting NDSLs, an institution must use collection procedures which meet the standards in this Subpart, and any additional collection measures that it uses to collect other debts owed to the institution, such as parking fees, book bills and unpaid tuition accounts. These additional procedures shall include withholding academic transcripts and denying other student/alumni benefits, if these actions are taken to collect non-NDSL debts.

2. *Due diligence with regard to an endorser.* The Secretary proposes that if a borrower does not respond to the first overdue notice required in the billing procedures, the institution must take the steps required in this Subpart to collect the debt from any endorser.

**C. Contact With the Borrower**

1. *Exit Interview.* Section 3(b) of Pub. L. 98-79, the Student Loan Consolidation and Technical Amendments Act of 1983, amended section 463A of the Higher Education Act to require institutions to disclose certain loan information to NDSL borrowers prior to the beginning of the repayment period. Therefore, the Secretary proposes that institutions be required to provide the information required by that Act at the time of the exit interview. The information must be provided to the borrower on the promissory note or in another written statement provided to the borrower at the exit interview.

2. *Grace Period Notices.* Current regulations require institutions to send three notices regarding loan repayment to borrowers with a nine-month grace period and two notices to borrowers with a six-month grace period; however, the timing of the notices does not coincide. The Secretary proposes to condense the requirements and to coordinate the timing of the notices during the grace period to allow for ease of administration. In addition, current regulations require an institution to send the borrower a summary of his or her rights and responsibilities in the first grace period notice. The Secretary

proposes to require institutions to remind the borrower of his or her responsibility to comply with the terms of the loan.

An institution is not required to send the grace period notices for the grace period that follows a deferment.

**D. Billing Procedures**

The term "billing procedures," as used in these regulations, describes the series of actions routinely performed to notify borrowers of payment(s) due on their accounts, to remind borrowers when payment(s) are overdue, and to demand payment of overdue amount(s).

• Previously, institutions were required to contact borrowers seven times, a total which included three overdue notices. Under these new provisions the number of contacts has been reduced to five, including two overdue notices.

• These amendments will require institutions to send final demand letters by certified mail.

• The Secretary proposes that, in addition to informing defaulted borrowers in the final demand letter that their accounts will be referred for collection or litigation, institutions must also inform these borrowers that information about their default status may be referred to credit bureaus if they do not sent a payment or proper deferment request form within 30 days.

• The Secretary proposes a 30 day time limit on the advance notice an institution must give a borrower before the institution accelerates the loan.

• The Secretary proposes that an institution must deposit any funds collected as a result of billing the borrower into an insured interest-bearing account. Comments are invited regarding any difficulties that institutions expect to meet in complying with this requirement. The interest earned of those funds becomes an integral part of the Fund.

• The Secretary proposes to delete the requirement that the institution maintain a list of borrowers with overdue payments, updated monthly.

**E. Address Searches**

Certain procedures that appear in current regulations under billing procedures will appear under address search procedures. These procedures include required reviews of institutional records and telephone directories, and using the Department of Education's skip-tracing services. The Secretary also proposes to require institutions to request an address correction from the U.S. Postal Service.



#### F. Collection Procedures

The term "collection procedures," as used in these regulations, describes the series of more intensive efforts to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures.

- The Secretary proposes to delete the requirement that an institution must telephone or personally contact a borrower to determine why the borrower has not paid.

- If an institution contracts with a collection firm to attempt to collect on a defaulted loan, the firm may only retain that account for up to 9 months. If the borrower is still in default on his or her loan, the institution must make a significantly more intensive second effort to collect the loan. The institution may contract with another collection firm for the second collection effort.

- Institutions shall deposit all payments received through collection and litigation actions into an insured interest-bearing account. The interest earned on those funds becomes an integral part of the NDSL fund.

#### G. Use of Billing Services and Collection Firms

- Institutions which use a billing service or a collection firm must use one that deposits collected funds in an institutional trust account or lock-box.

- Institutions are accountable for the administration of the NDSL program, including all actions taken to bill and collect NDSLs. If an institution retains an agent to bill or collect its loans, it shall require the agent to supply a monthly statement to the institution, fully supported by documentation which clearly states the effort performed.

- An institution which uses a billing or collection firm shall use only a firm that is bonded in an amount covering the amount of collections on loans expected to be in its control for a two-month period of time.

- Currently regulations and this proposed rule prohibit an institution from using a collection firm and billing service that are commonly owned. However, the Secretary invites comment on whether this provision should be revoked. In addition, the Secretary invites comment on a provision that would require an institution that contracts with a single firm or with commonly-owned firms to perform both billing and collecting to obtain biannual audits of the NDSL accounts of the firm(s).

#### H. Referral to Credit Bureaus

The Secretary proposes in these regulations to require institutions, as an element of their collection procedure on a defaulted NDSL account, to refer the information regarding the defaulted account to at least one credit bureau. The Secretary takes this action because such referrals have been judged by Congress to be an inexpensive and desirable tool for collecting student loans held by the Department and other Federal agencies, and believes that such a procedure may significantly improve an institution's success in collecting its loan accounts, both by deterring defaults and by inducing defaulting borrowers anxious to repair their credit records to honor their student loan debts. The Secretary recognizes that credit bureaus differ widely in their geographic coverage, and therefore proposes that each institution select a bureau or bureaus needed to provide coverage over an area commensurate with the area from which that institution, as a whole, draws the largest portion of its students. An institution which draws from a national pool of students should refer its accounts to bureaus with national service networks, while a community college might reasonably refer its accounts to a smaller bureau providing services only in the institution's locale.

Under the referral procedure proposed here, institutions are to include in the information provided to borrowers at the exit interview or before the commencement of the repayment period a warning that the institution will use this new collection method where needed.

Consistent with the procedures required for ED to report its claims, institutions are to amend their dunning letters to advise delinquent borrowers that their account status information will be reported to credit bureaus if not brought current, and notify the borrower in the final demand letter of a last opportunity to seek an explanation and reconsideration of the amount of his or her debt before the institution reports the account to the credit bureau. Under this proposal, institutions would retain the flexibility to grant a deferment or to revise a repayment schedule for a borrower who, in response to a threatened referral to a credit bureau, demonstrates entitlement to these benefits.

Institutions are further advised that after information regarding a borrower's defaulted account is referred to a credit bureau, they are required to make a good-faith effort to respond to any inquiries received from the credit bureau

regarding the account information released to the bureau, and to modify their records and the information subsequently reported to that credit bureau if the borrower's account status changes.

#### I. Litigation Procedures

- The Secretary encourages an institution to pursue litigation including filing a claim in small claims court against borrowers who default on their NDSLs.

- The Secretary proposes to revise the conditions under which an institution must sue a borrower. However, the institution does not have to sue a borrower if it demonstrates that it is not cost-effective to litigate to collect from that borrower. The Secretary invites comments on how to determine when it would not be cost-effective to litigate.

#### J. Costs Chargeable to the NDSL Fund

- In the past we have received many requests from institutions to define "reasonable" collection costs. Therefore, in § 674.47 the maximum costs that may be charged to the NDSL Fund are specified.

- The Secretary proposes to permit as institution under certain circumstances to write off accounts of \$200 or less. However, an institution which writes off such an account is required to continue those collection efforts used to collect other debts owed to the institution, which do not give rise to significant additional costs, such as withholding academic transcripts.

- The current regulations allow an institution to charge collection and litigation costs to the Fund if those costs are not paid by the borrower, but do not require the institution to pass on such costs to the borrower. The Secretary is proposing here to require the institution to assess those costs against the defaulting borrower, to the extent permitted by local law. The Secretary will at a later date propose to revise the NDSL promissory note to require the borrower to pay any collection and litigation costs necessary for the collection of any amount not paid when due.

#### K. Bankruptcy

Provisions regarding collection from debtors in bankruptcy have been substantially expanded to reflect changes in bankruptcy law that have become effective since this Subpart was last revised.



*L. Assigning Defaulted NDSL Notes to the United States*

In 1972, legislation was passed providing that if a NDSL note has been in default for at least two years despite due diligence on the part of the institution in collecting the loan, the institution may assign its rights under that note to the States without recompense. A new section has been added to Subpart C providing institutions with requirements that must be followed if they want to assign NDSLs to the United States. Some of these requirements are:

- The total amount of outstanding principal and interest must be greater than \$200.00.
- The note must be accelerated (the total amount of the note becomes due and payable).
- The institution must submit a form provided by the Secretary (ED Form 553 8/84) with the required documentation.
- A note may not be assigned if it has been discharged in bankruptcy.

**Executive Order 12291**

The proposed regulations have been reviewed in accordance with Executive Order 12291.

They are classified as non-major because they do not meet the criteria for major regulations established in the order.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Small entities affected by these regulations are small institutions of higher education, billing firms, and collection firms. These regulations implement statutory amendments, reduce paperwork compliance and reporting requirements, and modify the due diligence requirements under current regulations.

**Invitation to Comment**

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. Written comments and recommendations may be sent to the address at the beginning of this document. All comments submitted on or before the 45th day after publication of this document will be considered before the Secretary issues final regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Regional Office Building 3, Room 4018, 7th and D Streets, S.W., Washington,

D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is especially invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

**Paperwork Reduction Act**

The information collection requirements contained in these proposed rules at §§ 674.42, 674.47 and 674.48 will be sent to OMB for review under the provisions of section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Comments concerning information collection requirements *only* should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, N.W., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from the other agency or authority of the United States.

**List of Subjects in 34 CFR Part 674**

Education, Loan programs—  
education, Student aid.

**Citation of Legal Authority**

A statement of statutory or other legal authority is placed in parentheses on the line following each substantive provisions of these regulations.

(Catalog of Federal Domestic Assistance Number 84.038 National Direct Student Loan Program)

Dated: February 19, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to revise Part 674 of Title 34 of the Code of Federal Regulations as follows:

**PART 674—NATIONAL DIRECT STUDENT LOAN PROGRAM**

1. The table of contents for Subpart C of Part 674 is revised to read as follows:

**Subpart C—Due Diligence**

Sec.

- 674.41 Due diligence—general requirements.
- 674.42 Contact with the borrower.
- 674.43 Billing procedures.
- 674.44 Address searches.
- 674.45 Collection procedures.
- 674.46 Litigation procedures.
- 674.47 Costs chargeable to the Fund.
- 674.48 Use of contractors to perform billing and collection or other program activities.
- 674.49 Bankruptcy of borrower.
- 674.50 Assignment of defaulted NDSL notes to the United States.

2. Subpart C of Part 674 is revised to read as follows:

**Subpart C—Due Diligence****§ 674.41 Due diligence—general requirements.**

(a) *General.* Each institution shall exercise due diligence in collecting NDSLs by complying with the provisions in this subpart. In exercising this responsibility, each institution shall, in addition to complying with the specific provisions of this subpart—

(1) Keep the borrower informed, on a timely basis, of all changes in the program that effect his or her rights or responsibilities;

(2) Respond promptly to all inquiries from the borrower or any endorser; and

(3) Use those collection procedures to collect NDSLs that it uses to collect other debts owed to the institution, such as parking fees, book bills, and unpaid tuition accounts.

(b) *Due diligence with regard to endorser.* If a borrower does not respond satisfactorily to the first overdue notice required in § 674.43(b), and institution shall, in addition to pursuing the borrower, attempt to collect the debt from any endorser using the steps described in this subpart.

(c) *Coordination of information.* An institution shall ensure that information is routinely shared among its offices (including the admissions, business, alumni, placement, financial aid and registrar's offices) in order to determine—

(1) The enrollment status of the borrower;

(2) The expected graduation or termination date of the borrower;

(3) The date of any unexpected departure of the borrower; and



(4) The current address of the borrower.

(20 U.S.C. 424, 1087cc)

**§ 674.42 Contact with the borrower.**

(a) *Exit interview.* (1) An institution shall conduct an exit interview with each borrower before he or she leaves the institution. If an individual interview is not feasible, the institution may conduct a group interview. During the interview the institution shall restate for the borrower the terms and outstanding balance(s) of the loan(s) held by the institution, and the borrower's duty to repay them in accordance with the repayment schedule. The institution shall explain to the borrower the consequences of defaulting including possible referral to a collection firm, referral to a credit bureau, and litigation. Furthermore, the institution shall explain the borrower's right and responsibilities under the loan(s), including the following—

(i) The borrower's responsibility to inform the institution immediately of any address change;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for filing for those benefits; and

(iii) The borrower's responsibility to contact the institution in a timely manner, before the due date of any payment he or she cannot make.

(2) An institution shall disclose the following information during the exit interview, and shall include it in the promissory note or in another written statement provided to the borrower—

(i) The name and the address of the institution to which the debt is owed and to which communications should be sent;

(ii) The name and the address of the party to which payments should be sent;

(iii) The estimated balance owed by the borrower on the loan(s) held by the institution on the date on which the repayment period is scheduled to begin;

(iv) The stated interest rate on the loan(s);

(v) The repayment schedule for all loans covered by the disclosure including the date the first installment payment is due, and the number, amount, and frequency of required payments;

(vi) An explanation of any special options the borrower may have for loan consolidation or other refinancing of the loan, and a statement that the borrower has the right to prepay all or part of the loan(s) at any time without penalty;

(vii) The nature of any fees which may accrue or be charged to the borrower during the repayment period, including any costs and charges necessary for the

collection of any amount not paid when due; and

(viii) The total of interest charges which the borrower will pay on the loan(s) pursuant to the projected repayment schedule.

(3) At the time of the exit interview the institution shall—

(i) Have the borrower sign the repayment schedule;

(ii) Provide a copy of the signed promissory note and the signed repayment schedule to the borrower; and

(iii) Retain signed copies of both the note and the repayment schedule in the institution's files.

(4) The institution shall contact a borrower promptly after it determines that the borrower either has not attended an exit interview that he or she was scheduled to attend or has already left the institution, and shall—

(i) Provide such a borrower, either in person or by mail, the information described in paragraphs (a) (1) and (2) of this section; and

(ii) Provide a copy of the note and two copies of the repayment schedule to such a borrower and request that the borrower promptly sign and return one of the schedules to the institution.

(b) *Contact with the borrower during the grace period.* (1)(i) For loans with a nine-month grace period (loans made before October 1, 1980), the institution shall contact the borrower three times within the grace period.

(ii) For loans with a six-month grace period (loans made on or after October 1, 1980), the institution shall contact the borrower twice during the grace period.

(2)(i) The institution shall contact the borrower for the first time 90 days after the commencement of the grace period. The institution shall at this time remind the borrower of his or her responsibility to comply with the terms of the loan and shall send the borrower the following information—

(A) The total amount to be repaid on the NDSL account, including principal and interest accruing over the life of the loan; and

(B) The date and amount of the first required payment.

(ii) The institution shall contact the borrower the second time 150 days after the commencement of the grace period. The institution shall at this time notify the borrower of the date and amount of the first required payment.

(iii) The institution shall contact a borrower with a nine-month grace period a third time 240 days after the commencement of the grace period, and shall then inform him or her of the date and amount of the first required payment.

(20 U.S.C. 424, 1087cc, 1087cc-1)

**§ 674.43 Billing procedures.**

(a) The term "billing procedures," as used in this subpart, includes that series of actions routinely performed to notify borrowers of payments due on their accounts, to remind borrowers when payments are overdue, and to demand payment of overdue amounts. An institution shall use the following billing procedures—

(1) If the institution uses a coupon payment system, it shall send the coupons to the borrower at least 30 days before the first payment is due.

(2) If the institution does not use a coupon system, it shall send to the borrower—

(i) A written notice giving the name and address of the party to which payments are to be sent and a statement of account at least 30 days before the first payment is due; and

(ii) A statement of account at least 15 days before the due date of each subsequent payment.

(b) An institution shall send a first overdue notice 15 days after the due date for a payment if the institution has not received—

(1) A payment;

(2) A request for deferment; or

(3) A request for postponement or for cancellation as authorized under § 674.35.

(c) If the borrower does not satisfactorily respond to the first overdue notice, the institution shall continue to contact the borrower as follows, until the borrower makes satisfactory repayment arrangements or demonstrates entitlement to deferment, postponement, or cancellation:

(1) The institution shall send a second overdue notice 30 days after the first overdue notice is sent.

(2) The institution shall send a final demand letter by certified mail 15 days after the second overdue notice. This letter must inform the borrower that unless the institution receives a payment or a request for deferment, postponement, or cancellation within 30 days of the date of the letter, it will refer the account for collection or litigation, and will report the default to a credit bureau.

(d) Notwithstanding paragraphs (b) and (c) of this section, an institution may send a borrower a final demand letter if the institution has not within 15 days after the due date received a payment, or a request for deferment, postponement, or cancellation, and if—

(1) The borrower's repayment history has been unsatisfactory, e.g., the borrower has previously failed to make



payment(s) when due or to request deferment, postponement, or cancellation in a timely manner, or has previously received a final demand letter; or

(2) The institution reasonably concludes that the borrower neither intends to repay the loan nor intends to seek deferment, postponement, or cancellation of the loan.

(e) An institution that accelerates a loan (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable penalty charges, payable immediately) shall provide the borrower 30 days advance written notice of the acceleration. The institution may include this notice in the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g) An institution shall ensure that any funds collected as a result of billing the borrower are deposited promptly into an insured interest-bearing account.

(20 U.S.C. 424, 1087cc)

#### § 674.44 Address searches.

(a) If mail sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories and inquiries of information operators in the locale of the borrower's last known address;

(3) Requests for an address correction from the Postal Service; and

(4) Use of the Department of Education's skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a), it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquired the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b), the institution shall make reasonable attempts to locate the borrower at least

twice a year until litigation to collect the borrower's account would be barred under the statute of limitations of the State in which the institution is located. After that date and until the account is written off under § 674.47(e), an institution shall at least use any information available from its own records to attempt to locate the borrower.

(20 U.S.C. 424, 1087cc)

#### § 674.45 Collection procedures.

(a) The term "collection procedures," as used in this subpart, includes that series of more intensive efforts to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. Collection from a defaulted borrower also includes litigation as described in § 674.46. If a borrower does not satisfactorily respond to the final demand letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the defaulted account to a credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution shall select one or more credit bureaus for its information referrals with due regard for the coverage provided by the bureau or bureaus and the geographic areas from which the major portion of its student body was drawn.

(2) An institution shall report any changes in account status to the bureaus to which it reported the defaulted account, and shall respond promptly and accurately to any inquiries from those bureaus regarding the information referred to them.

(c)(1) If the institution or the firm it engages pursues collection activity for up to 9 months and does not succeed in persuading the borrower to make satisfactory arrangements to repay the loan, and the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall make a significantly more intensive second effort to collect the account, as follows—

(i) If the institution first attempted to collect the account using its own personnel, it shall, unless prohibited by State law, refer the account to a collection firm; or

(ii) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 9 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) An institution shall ensure that any funds collected from the borrower are deposited promptly into an insured interest-bearing account.

(e) If the institution is unable to place the loan in a repayment status described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this section, the institution shall continue to make reasonable attempts to collect from the borrower.

(20 U.S.C. 425, 1087cc)

#### § 674.46 Litigation procedures.

(a)(1) An institution shall sue a borrower if the collection efforts described in § 674.45 fail and it determines that—

(i) The total amount owing on the borrower's NDSL account, including outstanding principal and interest on all of the borrower's National Direct and Defense Student Loan(s) held by that institution, is more than \$200;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy at least a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower has no known legal defense other than one attributable to any act or failure to act by the institution; and

(v) The expected cost of litigation does not exceed the amount which can be recovered from the borrower.

(2) The institution may sue the borrower even if the conditions in paragraph (a)(1) of this section are not met.

(b) An institution shall ensure that any funds collected as a result of litigation procedures are deposited into an insured, interest-bearing account.

(c) If the institution is unable to collect a payment after following the procedures set forth in § 674.41 through this section, the institution may—

(1) With the Secretary's approval, refer the account to the Department of Education for collection, or



(2) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50.

(20 U.S.C. 424, 1087cc)

#### § 674.47 Costs chargeable to the Fund.

(a)(1)(i) Except as provided in paragraph (a)(1)(ii) an institution shall not charge the Fund any costs for billing the borrower under § 674.43.

(ii) The institution may charge the Fund the actual cost of telephone calls to the borrower pursuant to § 674.43.

(2) The institution may charge to the NDSL fund the reasonable costs of conducting address searches, collection and litigation activity as described in paragraphs (b), (c), and (d) of this section.

(b) *Address search.* The institution may charge the Fund for successful address searches required in § 674.44(b) an amount which may not exceed \$25 for each location of a borrower.

(c) *Collection.* (1) The institution shall assess collection costs against the borrower to the extent permitted under State law. The institution shall not charge to the Fund costs of collection which are—

(i) Paid by the borrower; or  
(ii) Attributable to unsuccessful collection efforts.

(2) The institution may charge the Fund reasonable collection costs for successful first collection efforts pursuant to § 674.45(a) in an amount which shall not exceed 33 1/3 percent of the amount of principal and interest collected from the borrower.

(3) The institution may charge the Fund reasonable collection costs for successful second collection efforts pursuant to § 674.45(b) in an amount which shall not exceed 50 percent of the amount of principal and interest collected from the borrower.

(4) If an institution performs its own collection activities it may charge costs as described in paragraphs (c) (2) and (3) of this section to the NDSL Fund. The Secretary considers the salary of an institutional employee performing NDSL collection functions to be a collection cost which an institution may charge to the Fund. The institution may charge the Fund that portion of an employee's salary attributed to the time spent by the employee in NDSL collection activities.

(5) If a collection firm performs both the address search and collection functions on a defaulted loan, the costs chargeable to the Fund for both of the functions may not exceed 33 1/3 percent of the amount of principal and interest collected by a first collection effort as required by § 674.45(a), or 50 percent for

a second collected effort as required in § 674.45(b)(1).

(6) For audit purposes, an institution shall support the amount of collection costs charged to the Fund with appropriate documentation, including telephone bills and receipts from collection firms. The documentation must be maintained in the institution's files as provided in § 674.19.

(d) *Litigation.* (1) The institution shall not charge to the Fund litigation costs paid by the borrower.

(2) The institution may charge to the Fund those litigation costs, including attorney fees, court costs, and other related costs not paid by the borrower, in an amount which does not exceed the lesser of \$2,000 or one-third of the amount of any judgment obtained.

(3) If a collection firm performs or contracts for the performance of both collection and litigation activities on a defaulted loan, the costs chargeable to the Fund for both of the functions may not exceed 33 1/3 percent of the amount of principal and interest collected by a first collection effort as required in § 674.45(a), or 50 percent for a second collection effort as required in § 674.45(b)(1).

(e) *Write-offs.* (1) If the total amount owing on a borrower's NDSL account held by that institution, including outstanding principal and accrued interest on all of a borrower's National Direct and Defense Student Loan(s) included in that account, is \$200.00 or less, an institution may write off that total if it carries out the procedures in §§ 674.43, 674.44, and 674.45. An institution which writes off an account under this paragraph no longer includes the amount of the account as an asset of the Fund, but does not cancel or forgive the debt, which the borrower remains obligated to repay.

(2) An institution which writes off such an account shall continue those collection efforts used to collect other debts owed the institution, which do not give rise to significant additional costs.

(20 U.S.C. 424 and 1087cc)

#### § 674.48 Use of contractors to perform billing and collection or other program activities.

(a) The institution is responsible for ensuring compliance with the billing and collection procedures set forth in this subpart. The institution may use employees to perform these duties or may contract with other parties to perform them.

(b) An institution that contracts for performance of any duties under this subpart remains responsible for compliance with the requirements of this subpart in performing these duties,

including decisions regarding cancellation, postponements, or deferral of repayment, extension of the repayment period, other billing and collection matters, and the safeguarding of all funds collected by its employees and contractors.

(c) If an institution uses a billing service to carry out billing procedures under § 674.43, the institution shall use a service that—

(1) Is bonded in an amount covering the amount of collections on loans expected to be in its control for a two-month period of time;

(2) Provides a monthly statement to the institution which shows its activities with regard to each borrower, including—

(i) The dates, types and number of contacts made with the borrower;

(ii) Any changes in the borrower's name, address, telephone number, and, if known, any changes to the borrower's social security number;

(iii) Payments received from the borrower, specifying the amounts applied to principal, interest, and penalty charges; and

(iv) Any requests for deferment, postponement or cancellation;

(3) Provides the institution with a monthly statement of its charges for skip-tracing activities and telephone calls;

(4) Does not deduct its fees from the amount it receives from borrowers; and

(5)(i) Instructs the borrower to pay the institution directly;

(ii) Deposits the funds collected from the borrower immediately upon receipt in a lock-box; or

(iii) Deposits those funds immediately upon receipt in an institutional trust account.

(d) If the institution uses a collection firm, the institution shall use a firm that—

(1) Is bonded in an amount covering the amount of collections expected to be in its control for a two-month period of time;

(2) Does not deduct its fees from the amount it receives from the borrower;

(3)(i) Instructs the borrower to pay the institution directly;

(ii) Deposits the fund collected from the borrower immediately upon receipt in a "lock-box"; or

(iii) Deposits those funds immediately upon receipt in an institutional trust account; and

(4) Provides a monthly statement to the institution which shows its activities with regard to each borrower including—

(i) The dates, types and number of contacts made with the borrower;



(ii) Any changes in the borrower's name, address, telephone number and, if known, any changes to the borrower's social security number;

(iii) Amounts collected from the borrower, specifying the amounts applied to principal, interest, and penalty charges;

(iv) Any requests, for deferment, postponement or cancellation;

(v) The name, address, and telephone number of the borrower's employer, if known;

(vi) A list of the borrower's assets, if known; and

(vii) An evaluation of the likelihood of collecting the accounts.

(e) If an institution uses a billing service to carry out § 674.43 (billing procedures), it may not use a collection firm that—

(1) Owns or controls the billing service;

(2) Is owned or controlled by the billing service; or

(3) Is owned or controlled by the same corporation, partnership, association, or individual that owns or controls the billing service.

(20 U.S.C. 424 and 1087cc)

#### § 674.49 Bankruptcy of borrower.

(a) *General.* When an institution receives notice that a borrower has filed a petition for relief in bankruptcy, usually by receiving a notice of first meeting of creditors, the institution and its agents shall immediately suspend any collection efforts against that borrower outside the bankruptcy proceeding.

(b) *Initial action—all cases.* Unless advised in the notice of first meeting of creditors that the debtor has no assets, the institution shall—

(1) File a proof of claim; and

(2) If practical, attend the first meeting of creditors.

(c) *Chapter 7 or 11 of the Bankruptcy Code.* In addition to the requirements of paragraphs (a) and (b), the institution shall follow these procedures if a borrower files a petition for relief under Chapter 7 or 11 of the Bankruptcy Code (Liquidation or Reorganization):

(1)(i) If the borrower files a complaint seeking to have the NDSL debt determined to be dischargeable on the ground that repayment of the loan would impose an "undue hardship" on the borrower and the dependents of the borrower, the institution shall oppose that request and, if the loan is in default, seek a judgment on the debt, unless it determines that the borrower has clearly proven that allegation.

(ii) In determining whether the repayment of the NDSL would cause an undue hardship on the borrower and the

borrower's dependents, the institution shall consider all possible payment plans that are acceptable to the institution and that are allowed by law. The institution may compromise a portion of the debt if, in the opinion of its counsel, such a compromise is necessary in order to obtain a judgment on the debt.

(2) If the borrower files a complaint seeking to have the NDSL determined to be dischargeable on the ground that the loan entered the repayment period more than five years before the filing of the petition for relief, exclusive of periods of authorized deferment, the institution shall oppose that request and, if the loan is in default, seek a judgment on the debt, unless it determines that the borrower has clearly proven that allegation.

(3) If the borrower does not file a complaint to have the NDSL debt determined to be dischargeable, and if the borrower has not yet entered the repayment period or if that borrower entered the repayment period on that loan less than five years before the filing of the petition for relief, exclusive of periods of authorized deferment, the institution shall either—

(i) File a complaint in the Bankruptcy court seeking—

(A) A determination that the loan is not dischargeable; and

(B) A judgment on the debt if the loan is in default; or

(ii) If the loan has entered the repayment period, resume collection action as prescribed in this subpart after the expiration of any stay of such action imposed under the Bankruptcy Code.

(d) *Chapter 13 of the Bankruptcy Code.* (1) If a borrower files a petition for relief under Chapter 13 of the Bankruptcy Code (Adjustment of Debts of an Individual with Regular Income), the institution shall review the plan proposed by the borrower to determine whether the plan as proposed complies with the requirements of the Bankruptcy Code. If the institution determines that grounds for objection to the proposed plan or the classification of the loan under the plan exist, the institution shall object to confirmation of the plan and, where appropriate, move to dismiss the petition or to convert the case to a case under Chapter 7 of the Code.

(2) If the borrower proposes a plan of payments over less than five years that will not satisfy the total amount of the loan, the institution shall request an extension of the plan for up to 5 years.

(3) The institution shall monitor the borrower's compliance with those provisions of an approved plan under Chapter 13 which govern payment of the NDSL debt, and shall oppose any

discharge sought in the case if the borrower has not complied with these provisions.

(e) Notwithstanding any other provision of this section, an institution need not oppose discharge on a proposed plan if it determines that costs of such action—

(1) Exceed the amount chargeable to the Fund under § 674.47(d)(2)(ii); and

(2) Cannot be assessed against the borrower.

(f) If an institution receives a repayment from a borrower after a loan has been discharged, it shall deposit that payment in its Fund.

(g) An institution shall terminate all collection action and write off a loan if it receives—

(1) A general order of discharge on a borrower owing an NDSL debt which entered repayment more than 5 years, exclusive of periods of deferment, from the date on which a petition for relief under Chapter 7 or 11 of the Bankruptcy Code was filed;

(2) A discharge order in a case brought under Chapter 13 of the Code; or

(3) A judgment in a case brought under Chapter 7 or 11 of the Code determining that repayment of the debt would constitute an undue hardship, and that the debt is therefore dischargeable.

(20 U.S.C. 424, 1087cc)

#### § 674.50 Assignment of defaulted NDSL notes to the United States.

(a) An institution may submit an NDSL note to the Secretary for assignment to the United States if—

(1) The loan has been in default for at least two consecutive years;

(2) The institution has been unable to collect on the loan despite complying with all of the due diligence procedures required by regulations in effect on the date the loan entered default.

(3) The total amount of the borrower's account to be assigned, including outstanding principal and accrued interest, is greater than \$200.00; and

(b) The note has been accelerated (see §§ 674.32(i) and 674.43(e)).

(d) Except as provided in paragraph (d), an institution may submit a defaulted note for assignment only during the submission period established by the Secretary.

(c) An institution shall include with any note it submits for assignment to the Secretary the following—

(1) An assignment form provided by the Secretary (ED Form 553 8/84 OMB No. 1840-0091);

(2) The original, properly-executed promissory note;

(3) A copy of the repayment schedule;



(4) The complete payment history described in § 674.19(d)(3);

(5) Copies of all approved requests for deferment and cancellation;

(6) Documentation that the institution has complied with all of the due diligence requirements described in paragraph (a)(2). An institution shall submit this documentation to the Secretary unless it has an NDSL program default rate, as calculated under § 674.6a(d) for purposes of determining entitlement of FCC, of 10.0 percent or less as of June 30 of the second year preceding the submission period;

(7) Documentation that the institution has withdrawn the loan(s) from any firm that it employed for address search, billing, collection or litigation services, and has notified that firm to cease collection activity on the loan(s); and

(8) Copies of all pleadings filed or received by the institution on behalf of a borrower who has filed a petition in bankruptcy and whose loan obligation is determined to be nondischargeable.

(d) The Secretary does not accept an assignment of a note if—

(1) The borrower has received a discharge in bankruptcy, unless—

(i) The bankruptcy court has determined that the loan obligation is nondischargeable and has entered judgment against the borrower; or

(ii) A court of competent jurisdiction has entered judgment against the borrower on the loan after the entry of the discharge order;

(2) The institution has initiated litigation against the borrower, unless the judgment has been entered against the borrower and assigned to the United States; or

(3) The borrower has filed for or been granted cancellation due to death or permanent and total disability.

(e)(1) The Secretary provides an institution written notice accepting assignment of the note. By accepting assignment, the Secretary acquires all rights, title, and interest in that loan.

(2) The institution shall endorse and forward to the Secretary any payment received from the borrower after the

date on which the Secretary accepted the assignment, as noted in the written notice of acceptance.

(f) An institution which has assigned a note to the Secretary shall indemnify the NDSL fund for any note which the Secretary later determines to be legally unenforceable because of an act or omission of that institution or its agents without regard to whether the Secretary has attempted litigation on that note against the borrower.

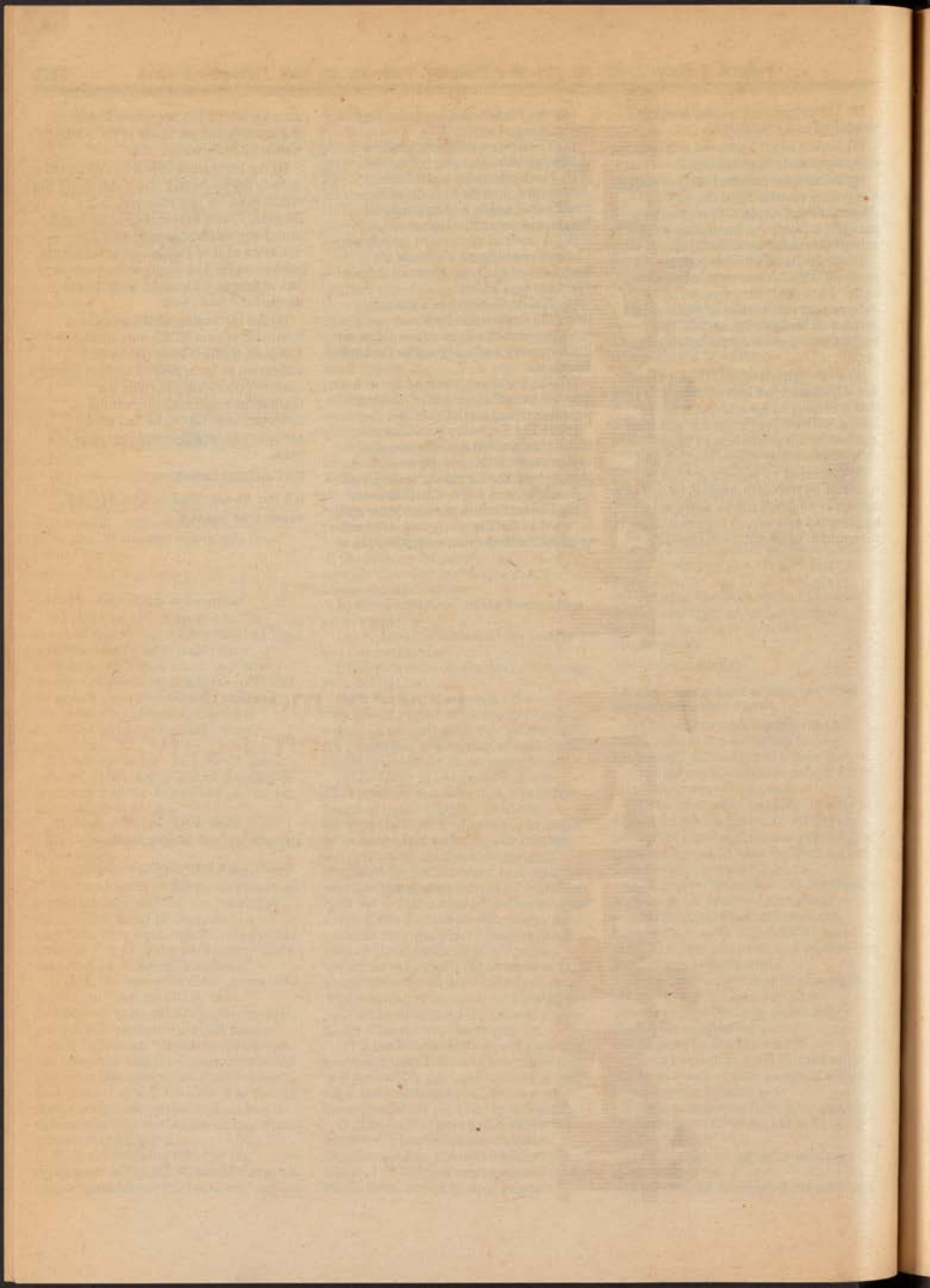
(g) An institution shall consider a borrower whose NDSL note has been assigned to the United States for collection to be in default on that loan until the borrower provides the institution confirmation from the Secretary that he or she has made satisfactory arrangements to repay the loan.

(20 U.S.C 424, 1087cc)

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Tuesday  
February 26, 1985

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## Part III

### Environmental Protection Agency

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40 CFR Part 261

Hazardous Waste Management System;  
Identification and Listing of Hazardous  
Waste; Proposed Rule and Request for  
Comment



**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 261**

(SW-FRL-2754-7)

**Hazardous Waste Management System; Identification and Listing of Hazardous Waste****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) today is proposing to exclude solid wastes generated at six facilities from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 as well as deny an exclusion to a petitioner for one of his waste streams. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "site-specific basis" from the hazardous waste list. The effect of this action, if promulgated, would be to exclude certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR Part 261.

The Agency has previously evaluated two of the petitions which are discussed in today's notice. Based on our review at that time, both petitioners were granted temporary exclusions. Due to the recent changes to the delisting criteria required by the Hazardous and Solid Waste Amendments of 1984, however, these two petitions, and the other four petitions for which we propose to grant or deny an exclusion have been evaluated both for the factors for which the wastes were originally listed as well as all other factors and toxicants reasonably expected to be present in these wastes.

**DATES:** EPA will accept public comments on these proposed exclusions until April 12, 1985. Any person may request a hearing on these proposed exclusions by filing a request with Eileen B. Claussen, whose address appears below, by March 19, 1985. The request must contain the information in 40 CFR 260.20(d).

**ADDRESSES:** Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Communications should identify the regulatory docket number "Section 3001(1)—Delisting Petitions."

The public docket for these proposed exclusions is located in Room S212A., U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. Myles Morse, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 475-8551.

**SUPPLEMENTARY INFORMATION:****Background**

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit many of the characteristics of hazardous waste identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a) or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. While a waste that is described in these regulations generally is hazardous, a specific waste meeting the listing description from an individual facility may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for listed wastes.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents), other than those for which the waste was

listed if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that his waste does not exhibit any of the hazardous waste characteristics as well as present sufficient information for the Agency to demonstrate whether the waste contains any other toxicants at hazardous levels. (See 40 CFR 261.22(a); section 222 of the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. 3001(f); and the background documents for the listed wastes.) Although wastes which are "delisted" (*i.e.*, excluded) are evaluated to determine whether or not they exhibit any of the characteristics of a hazardous waste, generators remain obligated to determine whether their waste remains non-hazardous based on the hazardous waste characteristics—namely, ignitability, reactivity, corrosivity, and EP toxicity.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. (See 40 CFR 261.3 (c) and (d)(2).) Again, the substantive standard for "delisting" is (1) that the waste not meet any of the criteria for which it was listed originally and (2) that the waste is not hazardous after considering factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Where the waste is derived from one or more listed hazardous wastes, the demonstration may be made with respect to each constituent or the waste mixture as a whole. (See 40 CFR 260.22(b).) Generators of these excluded treatment, storage, or disposal residues remain obligated to test these residues for the hazardous waste characteristics on a periodic basis.

**Approach Used To Evaluate Delisting Petitions**

The Agency first will evaluate the petition to determine if the waste (for which the petition was submitted) is non-hazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous (based on the original listing criteria), it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it then will evaluate the waste with respect to any other factors or criteria, if



there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Agency is using a hierarchical approach in evaluating petitions for the other factors or contaminants (i.e., those listed in Appendix VIII of Part 261). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Agency will evaluate this information to determine whether any Appendix VIII toxicants are used or formed in the manufacturing and treatment process and are likely to be present in the waste at significant levels. If so, the Agency then will request that the petitioner perform additional analytical testing. If the petitioner disagrees, he may present arguments on why the toxicants would not be present in the waste, or if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the rate of wastewater generation. If the Agency finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste, the petition would be tentatively denied, for insufficient information. The petitioner then may choose to submit representative analytical data on its waste.

Rather than submitting raw materials lists, petitioners may test their waste for any additional constituents that may be present and submit this data to the Agency. In this case, for any constituents from Appendix VIII of Part 261 which are not tested, the petitioner should submit an explanation of why they would not be present in the waste.

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). Specifically, the Agency considers whether the waste is acutely toxic, as well as the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated.

Delisting evaluations (as well as listing evaluations) are both quantitative and qualitative. Where possible, EPA seeks to develop quantitative criteria for making these decisions because such an approach assists in making consistent decisions.

In regard, the Agency has developed an analytical approach to determine whether a petitioned waste can be excluded. This approach, as presented here today, evaluates the petitioned wastes assuming a reasonable worst case land disposal scenario. Land disposal is considered here since that is the only reasonable management scheme for the wastes being evaluated today.<sup>1</sup>

This approach will be expanded to take into account other treatment or disposal methods (e.g., land treatment) in the next few months. This approach incorporates several reasonable worst case assumptions such as saturated soil conditions providing zero attenuation, zero degradation for organics which degrade slowly and no precipitation for metals, continuous toxicant input to an underlying aquifer at the maximum extract level, and a receptor well precisely in line with the source and ground-water flow. The dispersion of toxicants in the vertical and horizontal directions in an aquifer, perpendicular to ground-water flow is estimated using a vertical and horizontal spread (VHS) model. The overall approach is used to predict reasonable worst case contaminant levels in ground water in nearby receptor wells. The model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste. The receptor well concentration determined by the model will be compared directly to a health-based standard.

The approach, thus, develops a sliding regulatory scale which would suggest that a large volume of waste exhibiting a particular extract level not be delisted, while a smaller volume of the same waste would be considered non-hazardous.<sup>2</sup> The Agency believes this to be a reasonable outcome since a larger quantity of a waste (and the toxicants in the waste) would not be diluted enough to generate well concentrations below a health-based standard. The VHS model predicts that the larger the waste volume, the higher the level of toxicant in the receptor well. The mathematical relationship of the VHS model yields at least a ten-fold dilution of the toxicant concentration initially entering the aquifer (i.e., any waste exhibiting extract levels at or below ten times a health-based standard will generate a toxicant concentration at the receptor well equal to or below that same health-

based standard). Depending on the volume of the waste, up to an additional five-fold dilution may be imparted, that is, a total dilution of up to fifty times.

The VHS model requires the petitioner to supply information on four parameters. These are: the concentration of a specific toxicant in the extract;<sup>3</sup> the waste generation rate; and the waste density.

The Agency proposes to use this approach as one factor to determine the potential impact of unregulated disposal of petitioned waste on human health and the environment. The Agency has used this approach in evaluating each of the wastes proposed for exclusion in today's publication. The Agency specifically requests public comment on the use of this model as a regulatory tool in evaluating delisting petitions and on whether the assumptions used on the model are representative of a reasonable worst case. Please refer to Appendix I of today's publication for a more complete description of the VHS model.

As indicated above, the approach outlined here today is an objective tool that the Agency intends to use in making delisting decisions. The Agency recognizes, however, that qualitative judgment always will play an important role in evaluating delisting petitions. The Agency has made an effort to point out the limitations of the model (see Appendix I). The Agency specifically requests comments on these limitations and on the extent to which EPA should rely on the VHS model.

EPA has not verified the submitted test data before proposing to grant these exclusions. The sworn affidavits submitted with each petition bind the petitioner to present truthful and accurate test results. In addition, the Agency has initiated a spot check sampling and analysis program to verify the representative nature of the data for some percentage of the petitions submitted before final exclusions will be granted.

Finally, before the Hazardous and Solid Waste Amendments of 1984, the Agency granted temporary exclusions without first requesting public comment. The amendments specifically require the Agency to provide notice and an opportunity for comment before granting

<sup>1</sup> Although these wastes may be treated by stabilization or some other means, eventually they will be disposed of on or in land in some way.

<sup>2</sup> Other factors may result in the denial of a petition, such as actual field ground-water monitoring data or spot check verification data.

<sup>3</sup> The Agency will use either the EP toxicity test, the EP for Oily Wastes, or some other leachate test to determine the extract level for inorganic contaminants. (The EP for Oily Wastes will be used in the case of wastes containing greater than 1% oil and grease.) Until an appropriate extraction procedure is developed for organics, however, information on how the toxicant partitions from the waste will be used.



an exclusion and to make any temporary exclusions final. All of the exclusions proposed today, including those for which temporary exclusions have been granted, will not become effective unless and until made final. A notice of final exclusion will not be published until all public comments (including those at requested hearings, if any) are addressed.

#### Petitions

The proposed exclusions published today involve the following petitioners: Gould, Inc., McConnellsville, Ohio; Keymark Corporation, Fonda, New York; Mearl Corporation, Peekskill, New York; Monroe Automotive, Paragould, Arkansas; Siegel-Robert, Inc., St. Louis, Missouri; Vermont American Corporation, Newark, Ohio.

#### I. Gould Inc.

##### A. Petition for Exclusion

Gould Inc., Foil Division (Gould), located in McConnellsville, Ohio, is involved in the manufacture of pure electroplated copper foil for use by the printed circuit industry. Gould has petitioned the Agency to exclude its treated sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical-etching and milling of aluminum. Gould has petitioned to exclude its waste because it does not meet the criteria for which it is listed.<sup>4</sup>

The listed constituents of concern for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Gould claims that its wastewater treatment process generated a non-hazardous sludge because the constituents of concern,

although present in the waste, are in essentially an immobile form. Gould further claims that this waste is not hazardous for any other reason.

Gould has submitted a detailed description of its electroplating and wastewater treatment processes including schematic diagrams; total constituent analyses and EP toxicity test results of the sludge for cadmium, total chromium, and nickel; total constituent analysis and a distilled water leach test for cyanide; and cyanide photodegradation<sup>5</sup> test results. Free cyanide concentrations are determined by analyzing for weak acid dissociable cyanide complexes using EPA's alternative test methodology "Test Method for the Determination of Reactive Cyanide and Sulfide Containing Wastes"<sup>6</sup>. This method of analysis was provided by EPA as an alternative to Method 9010 (test for total and amenable cyanide) in *Test Methods for Evaluating Solid Waste (SW-846)* after interferences were suspected using this test methodology.

Gould also submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; total oil and grease; and total organic carbon (TOC) analyses of representative waste samples. Gould further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Gould manufactures pure electroplated copper foil in continuous rolls for use by the printed circuit industry. In the production process, copper is continuously plated onto a rotating drum, peeled off as foil, and treated with copper sulfate. The copper foil is electroplated on one side with copper and brass, chrome coated, and dried.

Gould's waste treatment system involves the chlorine destruction of cyanide, sulfur dioxide reduction of hexavalent chromium, neutralization,

polymer addition, clarification, and plate and frame filtration. Grab samples were collected from random areas of the filter press on a daily basis. These daily grab samples were combined each week to form one composite sample. A total of twenty-five weekly composite samples were collected and analyzed over a two-year period. Gould claims that the samples collected are representative of any variation of the listed and unlisted constituent concentrations in the waste. The petitioner further claims that the manufacturing processes used at the facility are operated in a consistent manner and that the use of raw materials does not vary over time.

The total constituent analyses of the final treatment sludge for the listed constituents revealed the maximum concentrations reported in Table 1. EP toxicity analyses for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1

| Maximum total constituent analyses (ppm) | Cd  | Cr total | Ni | CN total | CN free |
|------------------------------------------|-----|----------|----|----------|---------|
| Filter: Press Sludge                     | 229 | 23,080   | 90 | 83       | <2      |

TABLE 2

| Maximum EP leachate concentrations (ppm) | Cd   | Cr <sup>6</sup> total | Ni  | CN (total) distilled water extract |
|------------------------------------------|------|-----------------------|-----|------------------------------------|
| Filter: Press Sludge                     | <0.1 | <0.5                  | 2.5 | <0.03                              |

<sup>4</sup>Hexavalent chromium is listed as the constituent of concern for this waste; however, since the concentration of total chromium is low, a determination of the concentration of hexavalent chromium is unnecessary.

Photodegradable cyanide test data revealed non-detectable levels (<2 ppm). Reactive cyanide (gas generation) test data also revealed non-detectable levels of free cyanide (as hydrogen cyanide gas). EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 3.

TABLE 3

|                      | Maximum EP leachate concentrations (ppm) |      |      |       |        |      |
|----------------------|------------------------------------------|------|------|-------|--------|------|
|                      | As                                       | Ba   | Pb   | Hg    | Sa     | Ag   |
| Filter: Press Sludge | <0.02                                    | <5.0 | <0.5 | 0.013 | <0.002 | <0.5 |

Total oil and grease values reported were less than 0.08 percent. Samples analyzed for TOC showed a maximum concentration of 0.19 percent. Gould also submitted a list of all raw materials used in their process. This list indicated

<sup>4</sup> Gould originally submitted their petition on March 3, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Gould. See 49 FR 4503, February 8, 1984. This additional information was submitted by Gould on October 5, 1983 and May 19, 1984.

<sup>5</sup> See "Agency Analysis and Action" below for a description of this methodology.

<sup>6</sup> This EPA test method, also referred to as the "Reactive Cyanide", "Reactive Sulfide", or "Gas Generation Test" is available in the public docket. This method has been developed by the Agency to assist any person to determine whether a waste demonstrates the characteristic of reactivity set out in § 261.23(e)(5). The test is run in a closed system, in an acidified environment (pH 2); any gas generated is pumped through a detector tube. The test measures free cyanide or soluble sulfide that is generated as hydrogen cyanide or hydrogen sulfide gas, respectively.



that no Appendix VIII hazardous constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Gould claims that the maximum volume of waste generated from its filter press, at a 25 percent solids content, is 1,200 tons annually.

#### B. Agency Analysis and Action

Gould has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the twenty-five composite samples collected from the filter press over two years were non-biased and more than adequately represents any variations which may occur in the waste stream petitioned for exclusion. The Agency is satisfied that the weekly compositing conducted by Gould does not mask concentration variations, since the process engineering indicates that samples collected on one day would not be expected to vary widely from those collected any other day. The key factor which would vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variations in raw materials used can be expected when a facility either performs as a job shop or when the product line changes on a seasonal basis. Since this facility does not perform as a job shop or have seasonal product variations, the Agency believes that Gould's claim that the manufacturing and treatment processes are uniform and consistent has been substantiated. Furthermore, the waste is accumulated for several days before disposal, rather than disposed of on a daily basis. Weekly composites thus are better examples of the waste, as disposed of, than daily samples. The samples, therefore, are representative of the waste generated by Gould.

The Agency's conclusion was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste, (i.e., the standard deviation was low. \*

The Agency has evaluated the mobility of the constituents from Gould's waste using a vertical and horizontal spread (VHS) model. \* The

Agency's evaluation of Gould's 1,200 tons of filtered sludge and the maximum extract levels for the constituents of concern using the VHS model has generated the receptor well concentrations exhibited in Table 4.

TABLE 4.

| VHS Model: Calculated<br>Receptor Well<br>Concentration (ppm) | Cd     | Cr    | Ni    | CN     |
|---------------------------------------------------------------|--------|-------|-------|--------|
| Filtered Sludge                                               | <0.003 | <0.01 | <0.06 | <0.001 |
| Health-Based Standard:                                        |        |       |       |        |
|                                                               | 0.01   | 0.05  | 0.832 | 0.20   |

The filtered sludge exhibited cadmium and chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standards, nickel levels below the Ambient Water Quality Criterion,<sup>10</sup> and cyanide levels below the U.S. Public Health Services' suggested drinking water standard.<sup>11</sup> These constituents, therefore, are not of regulatory concern.<sup>12</sup>

considers the maximum extract concentrations and the volume of waste to be disposed. The model determines the ability of an aquifer to dilute the toxicant from a specific volume of waste without exceeding a health-based standard at the receptor well. Refer to Appendix I of this document for a complete description of the mathematical relationship and the assumptions used in the VHS model.

<sup>10</sup> Ambient Water Criteria for Nickel, EPA 440/5-80-000, October, 1980. (0.032 ppm)

<sup>11</sup> Drinking Water Standards, U.S. Public Health Service, Publication 956, 1962 (0.2 ppm)

<sup>12</sup> To confirm our conclusion that the waste is non-hazardous, the Agency has used an alternative method. The Agency calculated the toxicant levels expected at the receptor well using the upper confidence limit of a 95 percent confidence interval, in addition to the maximum extract level. See footnote 9.

Based on the data submitted by Gould, a confidence interval for each constituent of concern can be calculated. This enables the accuracy with which the sampled mean concentration reflects the true mean concentration of each constituent in the waste to be determined. The upper confidence limit may be calculated and used in the VHS model instead of the maximum EP value reported in the petition. The use of both the upper confidence level and the maximum EP value reported assures that the impact of all reasonable variations in the waste extract level on the toxicant concentrations at the receptor well has been taken into account. The confidence interval is determined using the following equation:

$$CI = \bar{x} \pm t(s/\sqrt{n})$$

where:

- $\bar{x}$  = mean concentration in the samples
- $t$  = t-value obtained from statistical tables
- $s$  = standard deviation
- $n$  = number of samples

If the upper limit of a 95 percent confidence interval is evaluated using the VHS model and generates a receptor well concentration below the health-based standard (e.g., the drinking water standard) then it can be concluded that, at least 95 times out of 100, all receptor well concentrations will fall below this level. The calculated upper limits for cadmium, total chromium, nickel, and

Free cyanide levels (as documented in Table 1) in the waste also are not expected to create a health hazard through exposure from ground-water. This conclusion is based on the VHS model, using the free cyanide content of the waste as the input to the aquifer (<2 ppm). The cyanide concentrations at the drinking water well still are below the U.S. Public Health Service's suggested drinking water standard.

The free cyanide in the waste also is not expected to create a health hazard by atmospheric contamination. These levels are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).<sup>13</sup>

The concentration of total complexed cyanides initially was of concern to the Agency, since complexed cyanide may photodecompose to free cyanide (see background document for EPA Hazardous Waste No. F006). This concern has been addressed, however, since Gould provided representative test data using the Agency's photodegradable cyanide test.<sup>14</sup> Photodegradable cyanide levels were all below 2 ppm. The Agency believes that this level does not pose any environmental threat, since the total concentration of photodegradable and free cyanide in the waste is well below the 10 ppm threshold set by ACGIH. The Agency believes that even under worst case conditions, the low concentration of photodegradable cyanide could be generated only by that fraction of the surface layer of waste directly exposed to sunlight. The Agency believes that any release of cyanide to the atmosphere will be reduced by dispersion to even lower levels. Furthermore, the Agency believes that the photodegradable cyanide test is a worst case indicator, due to the light intensity during exposure of the sample and the short distance of the light source from the sample.

cyanide extract levels are <0.1, <0.5, 2.05 and <0.03 ppm, respectively. Using these calculated upper limit values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium, the U.S. Public Health Service's suggested drinking water standard for cyanide, or the Ambient Water Criterion for nickel.

<sup>13</sup> See *Documentation of the Threshold Limit Values for Substances in Workroom Air*, American Conference of Governmental Industrial Hygienists, Third edition, 1971, Cincinnati, Ohio.

<sup>14</sup> The Agency developed the photodegradation test to assist in determining whether a particular waste containing complexed cyanide would photodecompose to free cyanide or hydrogen cyanide gas. The test methodology has been proposed to be added to *Test Methods for Evaluating Solid Waste (SW-846)* as Method No. 9011. (See 49 FR 38791, October 1, 1984).

\* See standard T-test in *Biometry: The Principles and Practice of Statistics in Biological Research*; Sokal, R. and Rohlf, F.J. 1969.

\* The model approximates the dispersion of toxicants in an aquifer in the vertical and horizontal directions, perpendicular to ground-water flow. The VHS model is used to predict reasonable worst case contaminant levels in a receptor well 500 feet from the contaminant source. The model primarily



The Agency also has concluded, through the use of the VHS model, that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the receptor well) and that no hazardous organic constituents are present based on the indicator tests described below. The raw materials used by Gould in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease present in the

waste to the raw materials list. The TOC present reflects the oil and grease in the waste.<sup>15</sup>

The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste. For the other toxic metals, the data submitted by Gould (see above) shows low extract levels. Using these values in the VHS model results in levels at the well below the applicable health-based standards, as seen in Table 5.

TABLE 5

|                        | VHS Model: Calculated receptor well concentrations (ppm) |        |        |         |          |        |
|------------------------|----------------------------------------------------------|--------|--------|---------|----------|--------|
|                        | As                                                       | Ba     | Pb     | Hg      | Se       | Ag     |
| Filtered Sludge        | <0.001                                                   | <0.262 | <0.025 | <0.0007 | <0.00001 | <0.026 |
| Health-Based Standards |                                                          |        |        |         |          |        |
|                        | 0.05                                                     | 1.0    | 0.05   | 0.002   | 0.01     | 0.05   |

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Gould, Inc., Foil Division, located in McConnelville, Ohio, for its electroplating wastes, as described in its petition.

## II. Keymark Corporation

### A. Petition for Exclusion

Keymark Corporation, located in Fonda, New York, is involved in the chemical conversion coating of aluminum extrusions in the production of window frames. Keymark has petitioned the Agency to exclude its waste treatment sludge, presently listed as EPA Hazardous Waste No. F019—Wastewater treatment sludges from the chemical conversion coating of aluminum. The listed constituents of concern in EPA Hazardous Waste No. F019 are hexavalent chromium and cyanide. Keymark has petitioned to exclude its waste because it does not meet the criteria for which it is listed.<sup>16</sup>

Keymark's conversion coating process provides a corrosion resistant film to the

metal adhesive surface for later painting. Keymark claims that its wastewater treatment process generates a non-hazardous waste, with the constituents of concern present in essentially an immobile form. Keymark further claims that this waste is not hazardous for any other reason.

Keymark has submitted a detailed description of its manufacturing and treatment processes, including schematic diagrams; total constituent analyses for total chromium and cyanide; and EP toxicity test results for total chromium. Keymark also has submitted total constituent analyses and EP toxicity test results for arsenic, barium, cadmium, lead, mercury, nickel, selenium, and silver; total analyses for sulfide and reactive sulfide; total oil and grease; and TOC analyses of representative waste samples. Keymark further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

<sup>15</sup> On a theoretical basis, one would expect TOC to be 85% of the value for oil and grease. TOC values higher than those for oil and grease generally are observed, however, due to an artifact of the test method for oil and grease. The difference between the levels of TOC and oil and grease is due to the loss of volatile components of the oil or grease during the test.

<sup>16</sup> Keymark originally submitted their petition on August 9, 1982. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to

consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. in anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Keymark. See 49 FR 4803, February 8, 1984. This additional information was submitted by Keymark on April 20, May 14, and May 30, 1984.



The chromate conversion coating process uses chromic, hydrofluoric, and phosphoric acid in a series of contained spray tanks and forms complexes consisting of hydrated chromates, hydrous chromium oxides, and aluminum ions. Keymark claims that no cyanide is used in the manufacturing process. Waste treatment at Keymark includes pH adjustment, chromium reduction using sodium bisulfite, neutralization, equalization, polyelectrolyte addition, precipitation, clarification, and drum containerization.

Ten drums of waste were selected randomly from approximately 200 drums of stored waste that were generated over a six-month period. Complete core samples were collected from each drum

using a PVC core sampler. Keymark claims that the raw materials, production process, and treatment process do not vary over time. Keymark claims that these samples are representative of any variation in listed and unlisted constituent concentrations in its waste.

The total constituent analyses revealed maximum total chromium and total cyanide concentrations of 139,000 and <1.0 ppm, respectively. EP leachate test results showed a maximum total chromium concentration of 0.46 ppm.<sup>17</sup> (Since cyanide is not used in the process, Keymark did not conduct any leachate tests for cyanide.) EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 1.

TABLE 1

|                          | Maximum EP leachate concentrations (ppm) |      |       |      |       |     |        |       |
|--------------------------|------------------------------------------|------|-------|------|-------|-----|--------|-------|
|                          | As                                       | Ab   | Cd    | Pb   | Hg    | Ni  | Se     | Ag    |
| Filter Press Sludge..... | <0.002                                   | <0.1 | <0.01 | <0.1 | 0.001 | 0.1 | <0.001 | <0.01 |

Total oil and grease values reported were less than 0.2 percent. Samples analyzed for TOC showed a maximum concentration of 1.14 percent. Keymark also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Keymark claims to generate a maximum of 108 tons of conversion coating waste annually.

#### B. Agency Analysis and Action

Keymark has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the ten core samples taken by Keymark were non-biased and adequately represent any variations which may occur in the waste stream petitioned for exclusion. The Agency believes that the samples were representative since they were complete core samples which would have recorded any vertical stratification occurring in the drums. Since the samples were not composited, they would reflect any daily variation in the waste. The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line manufactured. Variation in raw materials used can be expected when a facility either performs as a job shop or

when the product line changes on a seasonal basis. Since this facility does not perform as a job shop or have seasonal product variations, the Agency believes that Keymark's claim that the manufacturing and treatment processes are uniform and consistent has been substantiated. The samples, therefore, are representative of the waste generated by Keymark.

The Agency's conclusion that the sampling adequately represents Keymark's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste, (*i.e.*, the standard deviation was low).<sup>18</sup>

The Agency has evaluated the mobility of the constituents from Keymark's waste using a vertical and horizontal spread (VHS) model.<sup>19</sup> The Agency's evaluation of Keymark's 108 tons of sludge and the maximum extract levels using the VHS model indicates that the maximum receptor well concentrations of chromium and cyanide are 0.0087 and <0.0009 ppm, respectively. The chromium levels (at the receptor well) are well below the National Interim Primary Drinking Water Standard, while the cyanide levels are below the U.S. Public Health Service's suggested drinking water

<sup>17</sup> See footnote 7.

<sup>18</sup> See footnote 8.

<sup>19</sup> See footnote 9.



standard.<sup>20</sup> These constituents, therefore, are not of regulatory concern.<sup>21</sup>

The Agency did not request free or leachable cyanide tests, due to the low levels of total cyanide present in Keymark's waste. The calculation for cyanide (cited above, using the VHS model) assumed that all of the total cyanide present in the waste would be leachable (the maximum total cyanide concentration in the waste was divided by 20 to obtain the maximum extract concentration, to follow the 20:1 dilution in the EP Toxicity Test). The total cyanide in the waste also is not expected to create a health hazard by atmospheric contamination. These levels are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).<sup>22</sup>

Keymark also provided test data on the sulfide content of their waste. The maximum sulfide content reported was 69 ppm, which was of concern to the Agency.<sup>23</sup> The Agency, however, has had many instances of positive interferences with the recommended soluble sulfide test (Method No. 9030—*Test Methods for Evaluating Solid Waste*). EPA provided Keymark with the Agency's alternative test methodology "Test Method for the Determination of Reactive Cyanide and Sulfide Containing Wastes".<sup>24</sup> Representative waste samples tested using this methodology showed non-detectable levels (less than 9 ppm) of hydrogen sulfide gas.

The Agency has also concluded through the use of the VHS model that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern (i.e., none are above any health-based standard at the well) and that no hazardous organic constituents are present based on the indicator tests described below. The raw materials used by Keymark in their manufacturing process do not contain any additional hazardous constituents.

For organic toxicants, this is confirmed by comparing the level of TOC and oil and grease present in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste.<sup>25</sup> The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous

constituents are present in the waste. For the other toxic metals, the data submitted by Keymark (shown above) shows low extract levels. Using these values in the VHS model results in levels at the well below the applicable health-based standards, as seen in Table 2.

TABLE 2

|                        | VHS Model: Calculated receptor well concentrations (ppm) |         |          |         |          |          |          |          |
|------------------------|----------------------------------------------------------|---------|----------|---------|----------|----------|----------|----------|
|                        | As                                                       | Ba      | Cd       | Pb      | Hg       | Ni       | Se       | Ag       |
| Filtered Sludge        | <0.00001                                                 | <0.0005 | <0.00005 | <0.0005 | <0.00001 | <0.00005 | <0.00001 | <0.00005 |
| Health-Based Standards |                                                          |         |          |         |          |          |          |          |
|                        | 0.05                                                     | 1.0     | 0.01     | 0.05    | 0.002    | 0.002    | 0.01     | 0.05     |

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to the Keymark Corporation, located in Fonda, New York, for its treated sludge from the chemical conversion coating of aluminum, as described in its petition.

## II. Mearl Corporation

### A. Petition for Exclusion

The Mearl Corporation (Mearl), involved in the production of cosmetic pigments, petitioned the Agency in January 1981 to exclude its treated sludge listed as EPA Hazardous Waste Nos. K008—Wastewater treatment sludge from the production of chrome oxide green pigments (anhydrous and hydrated) and K007—Wastewater treatment sludge from the production of iron blue pigments. The listed constituents of concern for these wastes are hexavalent chromium and cyanide (complexed).

Based on our review of their petition, Mearl was granted a conditional temporary exclusion on August 6, 1981 (see 46 FR 40163).<sup>26</sup> Our basis for granting the exclusion was the low migration potential of chromium and cyanide from the wastes. The Agency conditioned the exclusion, however, requiring that the waste be covered as a daily practice because of the Agency's concern that some of the complexed cyanide (non-toxic) in the waste might be converted to free cyanide (toxic) by sunlight. This condition was incorporated into the temporary exclusion to prevent the possible photodecomposition of total cyanide to free cyanide in the waste. (See 46 FR

40163, August 6, 1981). This action excluded the waste generated during the production of chromium hydroxide treated titanium dioxide mica pigments, anhydrous chromium oxide treated titanium dioxide mica pigments, and iron blue coated titanium dioxide mica pigments.

On October 13, 1981, Mearl requested the Agency to amend their temporary exclusion to remove the condition which requires the waste be covered as a daily practice. In addition, on November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See Section 222 of the Amendments, 42 U.S.C. 3001(f).) As a result, the Agency has re-evaluated Mearl's original petition to: (1) Determine whether the temporary exclusion should be made final or amended (i.e., by removing the condition) based on the original listing criteria and (2) evaluate the waste for factors (other than those for which the waste was originally listed) to determine whether the waste is non-hazardous. Today's notice is our review of their petition.

Mearl has submitted a description of its pigment production processes, including schematic diagrams; total constituent analyses of the sludge for total chromium and cyanide; EP toxicity test data for chromium; a distilled water leach test for cyanide; and reactivity

<sup>20</sup> See footnote 11.

<sup>21</sup> The calculated upper limits of a 95 percent confidence interval for the chromium and cyanide extract levels are 0.440, and <0.05 ppm, respectively. Using these calculated upper limit values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards for chromium or the U.S. Public Health Service's suggested drinking water standard for cyanide. See footnote 12 for an explanation of the confidence interval calculations.

<sup>22</sup> See footnote 13.

<sup>23</sup> The Agency's health based standard for hydrogen sulfide is 10 ppm. See *Documentation of the Threshold Limit Values for Substances in Workroom Air*, American Conference of Governmental Industrial Hygienists, Third edition, 1971, Cincinnati, Ohio.

<sup>24</sup> See footnote 8.

<sup>25</sup> See footnote 15.

<sup>26</sup> The temporary exclusion granted August 6, 1981 was based on maximum chromium extract values of 0.03 ppm and non-detectable free cyanide values.



test<sup>27</sup> and photodegradation test data for cyanide. Mearl also has submitted total constituent and EP toxicity test results for the other EP toxic metals and nickel, total oil and grease, and TOC analyses of representative waste samples. Mearl further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Mearl precipitates iron blue onto titanium pigment by the addition of a ferro cyanide solution and a ferric salt solution. The resulting solution then is filtered and dried. Any waste from the process is from loss of the product at the filtration step. The waste treatment system combines all of the wastewaters, which consist primarily of sulfuric acid and sodium chloride, from the facility. The waste treatment involves neutralization with lime, precipitation, and filtration. Mearl claims that any heavy metals in the waste are immobilized gypsum (from lime addition) and that all cyanide in the waste is in the insoluble, non-toxic form of ferric ferrocyanide. Mearl further claims that their waste is not hazardous for any other reason.

Grab samples were collected from random areas of the filter press each time a batch was run, over an eight month period. Although initially these samples were combined into weekly composites (*i.e.*, the first eight samples), at the Agency's request grab samples were tested within 24 hours of sampling to assure that no cyanide was lost. In all, thirty-six batches were sampled and analyzed for cyanide (twenty-eight were not composited), while eight samples were analyzed for chromium. Mearl claimed the eight samples analyzed for chromium in the original petition were representative of any variation of chromium concentrations in the waste. Additional samples were analyzed for cyanide since initially artificially high free cyanide levels were reported, due to interferences. Additional sampling also was necessary for the petitioner to demonstrate that the waste would not photodecompose to free cyanide, thereby justifying removal of the condition (to cover that waste daily) from the exclusion. Mearl further claims that waste samples were collected from each type of cosmetic pigment produced

at the facility. Consequently, Mearl claims that all the samples were representative of any variation in constituent concentration in the waste.

The total constituent analyses for chromium and cyanide revealed maximum total chromium and cyanide levels of 800 and 170 ppm, respectively. EP toxicity test data showed maximum total chromium<sup>28</sup> and cyanide (using

distilled water extraction) extract levels of 0.03 and 0.3 ppm, respectively. Maximum reactive cyanide<sup>29</sup> and photodegradable<sup>30</sup> cyanide levels reported were 2.0 ppm and non-detectable (at a detection limit of 1 ppm), respectively. EP toxicity analyses for the non-listed metals revealed the maximum concentration reported in Table 1.

TABLE 1

|                     | Maximum EP Leach Concentrations (ppm) |     |       |      |        |      |        |      |
|---------------------|---------------------------------------|-----|-------|------|--------|------|--------|------|
|                     | As                                    | Ba  | Cd    | Pb   | Hg     | Ni   | Se     | Ag   |
| Filter Press Sludge | <0.02                                 | 0.4 | 0.001 | <0.1 | <0.005 | 0.01 | <0.002 | 0.06 |

Total oil and grease values reported were less than 0.05 percent. Samples analyzed for TOC showed a maximum concentration of 0.24 percent and an average concentration of 0.09 percent. Mearl also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Mearl claims to generate a maximum of 2,000 tons of filter cake waste annually.

#### B. Agency Analysis and Action

Mearl has demonstrated that the wastes generated from their chromium pigment processes are non-hazardous. The Agency believes that the thirty-six composite and grab samples collected over eight months were non-biased and adequately represent any variations which may occur in the waste petitioned for exclusion. The Agency is not concerned about any averaging which occurred from the initial compositing into weekly composites for chromium, since the waste from several batches are combined and accumulated for three to four days before disposal. Weekly composites thus are better examples of the waste, as disposed of, than daily samples. The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product manufactured. The Agency accepts Mearl's claim that the sampling period was long enough to cover all scheduled changes in the product line, since both listed wastes (K006 and K007) were generated during this period. The samples, therefore, are representative of the waste generated by Mearl.

The eight month sampling period represented approximately 1,300 tons of

pigment waste treatment sludge, which is 86 percent of the waste generated annually by Mearl. The Agency's conclusion that the sampling adequately represents Mearl's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste, (*i.e.*, the standard deviation was low).<sup>31</sup>

The Agency has evaluated the mobility of cyanide and total chromium from Mearl's waste using a vertical and horizontal spread (VHS) model.<sup>32</sup> The Agency's evaluation of Mearl's 2,000 tons of filter sludge and the maximum extract levels using the VHS model indicates that the maximum chromium and cyanide levels that can occur at the drinking water well are 0.00056 and 0.02 ppm, respectively. The chromium level (at the receptor well) is well below the National Interim Primary Drinking Water Standard, while the cyanide level is below the U.S. Public Health Service's suggested drinking water standard.<sup>33</sup> These constituents, therefore, are not of regulatory concern.<sup>34</sup>

<sup>27</sup> The reactive cyanide test was run due to the high free cyanide levels (22 ppm) reported, which Mearl claimed were caused by interferences.

<sup>28</sup> See footnote 14.

<sup>29</sup> See footnote 8.

<sup>30</sup> See footnote 9.

<sup>31</sup> See footnote 11.

<sup>32</sup> The calculated upper limits of a 95 percent confidence interval for the chromium and cyanide extract levels are 0.04 and 0.45 ppm, respectively. Using these calculated upper limit values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standard for chromium and the U.S. Public Health Service's suggested drinking water standard for cyanide. See footnote 12 for an explanation of the confidence interval calculation.

<sup>27</sup> See footnote 8.

<sup>28</sup> See footnote 7.



The concentration of total complexed cyanides initially was of concern to the Agency, since complexed cyanide may photodecompose to free cyanide (see background document for EPA Hazardous Waste No. F006). The Agency conditioned its original decision by requiring that the waste be covered as a daily practice. The petitioner has addressed this concern by providing representative test data using the Agency's photodegradation cyanide test.<sup>36</sup> Photodegradable cyanide levels were all non-detectable (at a detection limit of 1 ppm). The Agency believes that the photodegradation cyanide test represents worst case conditions due to the light intensity during exposure of the sample and the short distance of the light source from the sample. The Agency believes that the data submitted by Mearl indicates that the complexed cyanide present in the waste is non-photodegradable. Consequently, EPA believes the condition that was originally placed on the petition should be lifted. We solicit comments on this point.

The Agency initially also was concerned with the levels of free cyanide (cyanide amenable to chlorination) reported in Mearl's petition. The Agency is aware, however, that the methodology used by Mearl (Method 9010—Cyanide Amenable to Chlorination—See: *Test Methods for Evaluating Solid Waste*) is prone to positive interferences, especially in the presence of high concentrations of iron cyanide complexes. (Method 9010 operates on a difference measurement between two samples. One sample is chlorinated to destroy free cyanide and then total cyanide is determined for both samples. The difference in the two results is expressed as free cyanide. When samples contain high levels of complexed cyanide any small variation between the two samples will give an erroneous result. The Agency believes this is the case with this waste.) The Agency accepts Mearl's claim that the free cyanide levels reported were a result of interferences. The low levels of free cyanide found by the Agency's alternative "Reactive Cyanide" test supports this point.

The Agency also concluded through the use of the VHS model, that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern (*i.e.*, none are above any health-based standard at the receptor well) and that no hazardous organic constituents are present based on the indicator organic described

below. The raw materials used by Mearl in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease present in the waste to the raw materials list. The TOC

present reflects the oil and grease in the waste.<sup>38</sup> The toxic metals, the data submitted by Mearl (see above) shows low extract levels. Using these values in the VHS model results in levels well below the applicable health-based standards as seen in Table 2.

TABLE 2

|                       | VHS Model: Calculated receptor well concentrations (ppm) |      |         |        |         |        |         |        |
|-----------------------|----------------------------------------------------------|------|---------|--------|---------|--------|---------|--------|
|                       | As                                                       | Ba   | Cd      | Pb     | Hg      | Ni     | Se      | Ag     |
| Filtered Sludge       | 0.002                                                    | 0.04 | 0.00008 | <0.008 | <0.0004 | 0.0008 | <0.0002 | <0.005 |
| Health-Based Standard |                                                          |      |         |        |         |        |         |        |
|                       | 0.05                                                     | .1   | .01     | .05    | 0.002   | 0.632  | 0.01    | 0.05   |

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant a non-conditional exclusion to the Mearl Corporation in Peeksville, New York, for its treated pigment production wastes, as described in its amended petition. Until this proposal becomes final, EPA believes that Mearl may continue to handle their waste as non-hazardous, under the existing conditional exclusion spelled out in the *Federal Register* at 46 FR 40154, August 6, 1981.

#### IV. Monroe Auto Equipment

##### A. Petition for Exclusion

Monroe Auto Equipment (Monroe), located in Paragould, Arkansas, involved in the manufacture of shock absorbers, initially petitioned the Agency in October of 1980 to exclude its treated sludge listed as EPA Hazardous Waste No. F006—Wastewater treatment sludge from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. The listed constituents of concern for these wastes were cadmium, hexavalent chromium, nickel and cyanide (complexed).

Based on our review of their petition, Monroe was granted a temporary exclusion on December 31, 1980 (see 45 FR 86547-86548). Our basis for granting the exclusion was the low migration potential of cadmium, hexavalent chromium, nickel, and cyanide (complexed) from the waste. On

November 8, 1984, the Hazardous and Solid Waste Amendments were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 3001(f).) The Agency has re-evaluated Monroe's petition to: (1) Determine whether the temporary exclusion should be made final, based on the original criteria and (2) evaluate the waste for factors (other than those for which the waste was listed) to determine whether the waste is non-hazardous. Today's notice is our re-evaluation of this petition.

Monroe has submitted a description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and cyanide; Oily Waste EP toxicity test<sup>37</sup> results for cadmium, total chromium, and nickel; and a distilled water leach test for cyanide.

Monroe also has submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease, and TOC analyses of representative waste samples. Monroe further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as

<sup>37</sup> The Agency requested that Monroe run the Oily Waste EP toxicity test on their waste due to a total oil and grease content of 8.8 percent. The Agency has decided to use the Oily Waste EP to determine the migratory potential of metals from wastes containing greater than 1 percent oil and grease content. See 49 FR 42591, October 31, 1984. See also Method 1330 in "Proposed Sampling and Analytical Methodologies for Addition to Test Methods for Evaluating Solid Waste", as referenced in 49 FR 38790, October 1, 1984.

<sup>36</sup> See footnote 14.

<sup>38</sup> See footnote 15.



noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Monroe manufactures shock absorbers. In the manufacturing process, carbon steel rods are electroplated with hard chromium. Monroe claims to use only chromium in its plating operation, and that cadmium, nickel, and cyanide compounds are not used in any of its processes. Chromic acid rinse wastewater is treated with sulfur dioxide for chromium reduction, combined with alkaline cleaning and phosphating solutions, and mixed with lime and polymers which result in the neutralization and precipitation of metal hydroxides. The sludge is pumped to a storage lagoon and allowed to settle. The sludge then is subjected to vacuum filtration for dewatering. Monroe claims that its treated wastewater sludge is non-hazardous due to the immobile nature of chromium and the negligible levels of cadmium, nickel, and cyanide in the sludge. Monroe also believes that their waste is not hazardous for any other reason.

The on-site lagoon, 195 feet (length) by 80 feet (width), contains a sludge layer more than 6 feet deep. Samples were collected from the lagoon by dividing it into quadrants each of which then were subdivided into 10 foot by 10 foot sections to form a grid. Five random grid points then were selected in each quadrant and, using PVC core samplers, complete cores were collected. These twenty core samples then were combined by quadrant, yielding four composite samples. Four grab samples also were collected from the vacuum filter discharge over an eight day period. Monroe claims that the four composite samples taken from the lagoon and the four grab samples taken of the vacuum filter sludge are representative of any variation in constituent concentration in the waste. Monroe further claims that the manufacturing processes used at the facility are uniform and that the use of raw materials does not vary over time.

Total constituent analyses of the treatment sludges for the listed constituents revealed the maximum concentrations reported in Table 1. Oily Waste EP toxicity analyses for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1

|               | Maximum Total Constituent Analyses (ppm) |          |      |          |          |
|---------------|------------------------------------------|----------|------|----------|----------|
|               | Cd                                       | Cr total | Ni   | CN total | CN total |
| Sludge Lagoon | <0.5                                     | 700      | 2.0  | <0.5     | <0.5     |
| Vacuum Filter | <0.5                                     | 1050     | <0.5 | <0.5     | <0.5     |

TABLE 2

|               | Oily Waste EP Leachate Concentrations (PPM) |            |       |                          |
|---------------|---------------------------------------------|------------|-------|--------------------------|
|               | Cd                                          | Cr** total | Ni    | Cd leached water extract |
| Sludge Lagoon | .01                                         | 0.8        | 0.14  | <0.01                    |
| Vacuum Filter | 0.12                                        | 0.34       | 0.353 | <0.01                    |

\*\* See footnote 7.

Oily Waste EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 3.

TABLE 3

|                                     | Maximum Oily EP Leachate Concentrations (ppm) |      |    |       |      |    |
|-------------------------------------|-----------------------------------------------|------|----|-------|------|----|
|                                     | As                                            | Ba   | Pb | Hg    | Se   | Ag |
| Lagoon and Vacuum Filter (Combined) | <1                                            | <2.5 | <1 | <0.05 | <0.2 | <1 |

Maximum total oil and grease values reported for the sludge in the lagoon and the sludge from vacuum filter were 6.3 and 8.8 percent, respectively. Lagoon sludge and vacuum filter samples analyzed for TOC exhibited maximum levels of 2.1 and 2.8 percent, respectively. Monroe also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Monroe claims that the maximum volume of waste generated annually from its vacuum filter is 300 tons, while more than 2,500 tons of sludge is contained in their on-site lagoon.

#### B. Agency Analysis and Action

Monroe has demonstrated that the treatment sludge generated from its vacuum filter is non-hazardous; however, the Agency now believes that the sludge in the lagoon may present a substantial hazard to human health or the environment if improperly managed and therefore should be managed as hazardous. More specifically, the Agency believes that the four composite samples collected from the lagoon and the four grab samples taken from the filter press were non-biased and adequately represent any variations that may occur in the wastes petitioned for exclusion. The Agency also believes

that (with respect to the sludge in the lagoon) since the samples were complete cores and were taken randomly throughout the lagoon, any stratification occurring vertically due to settling or horizontally as a function of distance from the inlet pipe would be represented by the sampling scheme used. Due to the nature and consistency of the operations involved (i.e., the facility is not a job shop and production does not vary seasonally), the Agency also believes that the samples from both the lagoon and the filter press are representative to the waste generated by Monroe. The Agency also accepts Monroe's claims that the duration of the sampling period was long enough to cover any scheduled changes in the product line, since the facility does not vary its product line over the course of the year.

The Agency's conclusion that the sampling adequately represents Monroe's waste was confirmed by a comparison of the total constituent analyses for each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste, (i.e. the standard deviation was low).<sup>39</sup>

The Agency has evaluated the mobility of the constituents from Monroe's waste using a vertical and horizontal spread (VHS) model.<sup>40</sup> The Agency has evaluated the 2,250 tons of sludge contained in the lagoon as well as the 300 tons of vacuum filter sludge generated annually and the corresponding maximum extract levels using the VHS model. The resultant receptor well concentrations are shown in Table 4.

TABLE 4

|                       | VHS Model: Receptor well concentrations (ppm) |       |       |
|-----------------------|-----------------------------------------------|-------|-------|
|                       | Cd                                            | Cr    | Ni    |
| Sludge Lagoon         | 0.0009                                        | 0.069 | 0.012 |
| Vacuum Filter         | 0.002                                         | 0.006 | 0.005 |
| Health-Based Standard |                                               |       |       |
|                       | .01                                           | .05   | .632  |

The lagooned sludge exhibited cadmium levels (at the receptor well) below the National Interim Primary Drinking Standard and nickel levels below the Ambient Water Quality Criterion. Chromium values at the receptor well, however, exceed the National Interim Primary Drinking Water Standard of 0.05 ppm.

<sup>39</sup> See footnote 8.

<sup>40</sup> See footnote 9.



The vacuum filter sludge exhibited cadmium and chromium levels (at the receptor well) below the National Interim Primary Drinking Water Standards and nickel levels below the Ambient Water Quality Criterion. Cyanide levels were not evaluated using the VHS model since the total concentration in the waste is well below the U.S. Public Health Service's suggested drinking water standard of 0.2 ppm.<sup>41</sup> Total cyanide levels in the waste also are below the air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).<sup>42</sup> The constituents in the vacuum filter sludge, therefore, are not of regulatory concern.<sup>43</sup>

Furthermore, the Agency has concluded through the use of the VHS model, that no other hazardous inorganic constituents are present in the waste from the vacuum filter at levels of regulatory concern (i.e., none are above any health-based standard at the receptor well in the VHS model) and that no hazardous organic constituents are present based on the indicator tests described below. The raw materials used by Monroe in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the level of TOC present in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste.<sup>44</sup> The Agency believes therefore, that the waste contains no other organic hazardous constituents even though the difference in the TOC and oil and grease levels are significant. For the other toxic metals, the data submitted by Monroe (see above) shows low extract levels. Using these values in the VHS model results in levels at well below the applicable health-based standards as seen in Table 5.

<sup>41</sup> See footnote 11.

<sup>42</sup> See footnote 13.

<sup>43</sup> The calculated upper limits for the vacuum filter sludge are as follows: cadmium 0.10 ppm, chromium 0.32 ppm, and nickel 0.328 ppm. Therefore, using these calculated upper limit values for the vacuum filter sludge in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium; or the Ambient Water Quality Criterion for nickel. See footnote 12 for an explanation of the confidence interval calculation.

<sup>44</sup> The total oil and grease levels were significantly higher than the TOC levels in Monroe's waste. This difference is represented by freon extractable components which are not carbon-based. Since no other hazardous organic constituents are used by Monroe in the process generating the petitioned waste, this difference is not of regulatory concern.

TABLE 5

|                        | VHS Model: Calculated receptor well concentrations (ppm) |       |        |         |         |        |
|------------------------|----------------------------------------------------------|-------|--------|---------|---------|--------|
|                        | As                                                       | Ba    | Pb     | Hg      | Se      | Ag     |
| Filter Sludge          | <0.014                                                   | <0.35 | <0.014 | <0.0007 | <0.0028 | <0.014 |
| Health-Based Standards |                                                          |       |        |         |         |        |
|                        | 0.05                                                     | 1.0   | 0.05   | 0.002   | 0.01    | 0.05   |

The Agency, therefore, believes that the treatment process used by Monroe generates a non-hazardous waste, once it has been dewatered using the vacuum filter. The Agency proposes, therefore, to grant an exclusion to Monroe Auto Equipment, located in Paragould, Arkansas, for its electroplating wastes generated from its vacuum filter. Due to today's tentative decision to exclude the waste coming off the vacuum filter press, EPA believes that Monroe should continue to handle this waste as a non-hazardous waste.

Our decision does not apply to the sludge in the lagoon. As seen in Table 4, although the levels of cadmium and nickel are below the health-based standards, the level for total chromium exceeds the National Interim Primary Drinking Water Standard for chromium. The sludge in the lagoon, therefore, may present a substantial hazard to human health or the environment, if improperly managed.

The Agency proposes to exclude the filtered sludge even though the lagooned sludge still is considered hazardous. The Agency believes that there are sufficient differences between these two sludges, although the only major treatment performed is dewatering. In particular, the Oily EP data reported by Monroe indicates that the highest concentration of mobile chromium is located in the oily fraction of the waste. Since all floating oil is skimmed from the lagoon and more oil is separated from the waste during dewatering, a significant portion of the mobile chromium is removed in these fractions. The skimmed oil is handled separately (i.e., disposed of as hazardous or reclaimed) while the effluent from the filter press is discharged under an NPDES permit which regulates chromium content. The Agency believes that the lower mobile chromium content of the filter cake, and the smaller volume of waste comprise a sufficient basis to consider the vacuum filter sludge significantly different from the sludge in the lagoon. The Agency solicits comments on this decision.

## V. Siegel-Robert, Inc.

### A. Petition for Exclusion

Siegel-Robert Plating Company, a division of Siegel-Robert, Inc., located in St. Louis, Missouri, is involved in the manufacture of plastic molded parts for use by the automotive appliance industry. Siegel-Robert has petitioned the Agency to exclude its treated sludge presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludge from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Siegel-Robert has petitioned to exclude its waste because it does not meet the criteria for which it was listed.<sup>45</sup>

The listed constituents of concern for EPA Hazardous Waste F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Siegel-Robert claims that its wastewater treatment process generates a non-hazardous sludge because the constituents of concern, although present in the waste, are in essentially an immobile form. Siegel-Robert further claims that this waste is not hazardous for any other reason.

Siegel-Robert has submitted a detailed description of its electroplating and wastewater treatment processes, including schematic diagrams; total constituent analyses of the sludge for cadmium, total chromium, nickel, and

<sup>45</sup> Siegel-Robert originally submitted their petition on September 8, 1984. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be a hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 3001(f).) In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Siegel-Robert. This additional information was submitted by Siegel-Robert on October 15, and November 16, 1984.



cyanide; and EP toxicity test results for cadmium, total chromium, and nickel. Siegel-Robert also submitted total constituent and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; and total oil and grease, and TOC analyses of representative waste samples. Siegel-Robert further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Siegel-Robert electroplates plastic molded parts and small quantities of job shop contract parts (*i.e.*, nuts and bolts). Plastic parts are plated with cadmium, nickel, and chromium. Job shop parts are plated in various manual lines containing tin, copper, cadmium, nickel, zinc, and silver.

Siegel-Robert's wastewater treatment system includes chromium reduction using sulfur dioxide, cyanide destruction using chlorine gas, flocculation through polyelectrolyte addition, clarification, and filtration. Samples were collected from the filter press every 3 days over a 5-week period. Grab samples from three discrete areas of the filter press were collected and combined to form one sample on each sampling date. This resulted in the analysis of nine samples which the petitioner claims are representative of any variation in constituent concentration in the waste. The petitioner further claims that although the facility could be considered a job shop, the manufacturing processes used at the facility are uniform and the use of raw materials does not vary substantially over time. In addition, Siegel-Robert claims that the sampling period was long enough to cover any scheduled changes in the product line, and therefore all raw materials used in the process are represented by the samples collected.

Total constituent analyses of the final treatment sludge for the listed constituents revealed the maximum concentrations reported in Table 1. EP toxicity analyses for these same constituents revealed the maximum concentrations reported in Table 2.

TABLE 1

|                     | Maximum total constituent analyses (ppm) |          |     |        |          |
|---------------------|------------------------------------------|----------|-----|--------|----------|
|                     | Cd                                       | Cr total | CR* | Ni     | CN total |
| Filter Press Sludge | 300                                      | 78,000   | 10  | 25,000 | <0.02    |

TABLE 2

|                     | Maximum EP leachate concentrations (ppm) |            |      |
|---------------------|------------------------------------------|------------|------|
|                     | Cd                                       | Cr** total | Ni   |
| Filter Press Sludge | 0.26                                     | 0.45       | 2.55 |

\*\* See footnote 7.

EP toxicity analyses for the non-listed metals revealed the maximum concentrations reported in Table 3.

TABLE 3

|                     | Maximum EP leachate concentrations (ppm) |      |      |        |        |      |
|---------------------|------------------------------------------|------|------|--------|--------|------|
|                     | As                                       | Ba   | Pb   | Hg     | Se     | Ag   |
| Filter Press Sludge | <0.01                                    | 0.01 | 0.21 | <0.002 | <0.005 | 0.02 |

Total oil and grease values reported were less than 0.0004 percent. Samples analyzed for TOC showed a maximum concentration of 0.00073 percent. Siegel-Robert also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Siegel-Robert generates a maximum of 1,260 tons of waste annually.

#### B. Agency Analysis and Action

Siegel-Robert has demonstrated that its waste treatment system produces a non-hazardous sludge. The Agency believes that the samples collected from the filter press over a 5 week period were non-biased and adequately represents any variations which may occur in the waste petitioned for exclusion. The Agency initially was concerned that the sample population size was too small, since more than five percent of the cadmium extract values exceeded the upper confidence limit of a 95 percent confidence interval. Siegel-Robert claimed, however, that the variability was due to irregularities in the manufacturing and treatment processes which occurred because the facility had just begun operations. Siegel-Robert supported this claim with 42 additional daily composite samples taken over a three month period which were analyzed for cadmium mobility. (These samples were collected in the same manner as the original nine samples.) Using these additional samples, it was determined that greater than 95 percent of the samples fell below a new upper confidence limit of 0.08 ppm. The Agency, therefore, believes that the initial two extract values which exceeded the original

upper confidence limit were true outliers.

The key factor which could vary toxicant concentrations in this waste would be the use of different raw materials, due to changes in the product line being manufactured. Variation in the raw materials used can be expected when the facility either performs as a job shop or when the product line changes on a seasonal basis. The Agency believes that the sampling period used by Siegel-Robert was long enough to cover any scheduled changes in the product line, since Siegel-Robert has verified that all eight plating lines were in operation during the sampling period. The samples, therefore, are representative of the waste generated by Siegel-Robert.

The Agency's conclusion that the sampling adequately represents Siegel-Robert's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis initially detected significant variability only in the cadmium extract levels in the waste, which later was shown to be insignificant by an analysis of a larger sample population (*i.e.*, the original nine samples plus forty-two additional samples). This analysis would have, but did not, detect any significant variability in the waste (*i.e.*, the standard deviation was low).<sup>47</sup>

The Agency has evaluated the mobility of the constituents of concern from Siegel-Robert's waste using a vertical and horizontal spread (VHS) model.<sup>48</sup> The Agency's evaluation of Siegel-Robert's maximum extract levels using the VHS model has generated the receptor well concentrations exhibited in Table 4.

TABLE 4

|                        | VHS Model: Calculated receptor well concentrations (ppm) |       |       |
|------------------------|----------------------------------------------------------|-------|-------|
|                        | Cd                                                       | Cr    | Ni    |
| Filtered Sludge        | 0.01                                                     | 0.025 | 0.139 |
| Health-Based Standards |                                                          |       |       |
|                        | .01                                                      | .05   | .632  |

The filtered sludge exhibited cadmium and chromium levels (at the receptor well) equal to or below the National Interim Primary Drinking Water Standards, respectively, and nickel levels below the Ambient Water Quality

<sup>47</sup> See footnote 8.

<sup>48</sup> See footnote 9.



Criterion.<sup>49</sup> (Note: The Agency has decided to propose to delist those wastes where the expected concentration at the well is exactly equal to the health-based standard. The Agency's evaluation always uses the maximum leaching levels and other worst case assumptions. Due to this worst case approach, the Agency believes that wastes exhibiting predicted well concentrations just at the limit can be disposed of as non-hazardous and would not cause harm to human health or the environment.) Cyanide levels were not evaluated using the VHS model since the total concentration in the waste is below the U.S. Public Health Service's suggested drinking water standard.<sup>50</sup> Distilled water leachate tests also were not required for cyanide, again since the total amount of cyanide in the waste is below the health-based standard. These constituents, therefore, are not of regulatory concern.<sup>51</sup>

Free cyanide in the waste also is not expected to create a health hazard by atmospheric contamination, since it was not detected. Total (and therefore free) cyanide levels in the waste are well below the workroom air threshold limit of 10 ppm set by the American Conference of Governmental Industrial Hygienists (ACGIH).<sup>52</sup>

Furthermore, the Agency has concluded through the use of the VHS model, that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern (i.e., none are above any health-based standard at the receptor well in the VHS model) and that no other hazardous constituents are present based on the indicator tests described below. The raw materials used by Siegel-Robert in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease present in the waste to the raw materials list. The TOC present reflects the oil and grease content in the waste.<sup>53</sup> The Agency

believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste. For toxic metals, the data submitted by Siegel-Robert (see

above) shows low extract levels. Using these values in the VHS model results in levels at the well below the applicable health-based standards as seen in Table 5.

TABLE 5

|                        | VHS Model: Calculated receptor well concentrations (ppm) |       |       |         |         |       |
|------------------------|----------------------------------------------------------|-------|-------|---------|---------|-------|
|                        | As                                                       | Ba    | Pb    | Hg      | Se      | Ag    |
| Filtered Sludge        | <0.001                                                   | 0.001 | 0.021 | <0.0002 | <0.0005 | 0.002 |
| Health-Based Standards |                                                          |       |       |         |         |       |
|                        | .05                                                      | 1     | .05   | 0.002   | 0.01    | 0.05  |

The Agency believes that this waste is non-hazardous (for all reasons) and as such should be excluded from hazardous waste control. The Agency, therefore, proposes to grant an exclusion to Siegel-Robert Inc., located in St. Louis, Missouri, for its electroplating wastes, as described in its petition.

## VI. Vermont American Corporation

### A. Petition for Exclusion

Vermont American Corporation (Vermont American), electroplates hand saw blades at its Larson manufacturing facility in Newark, Ohio. Vermont American has petitioned the Agency to exclude their wastewater treatment sludge, presently listed as EPA Hazardous Waste No. F006—Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. Vermont American has petitioned the Agency to exclude their sludge because it does not meet the criteria for which it was originally listed.<sup>54</sup>

The listed constituents for EPA Hazardous Waste No. F006 are cadmium, hexavalent chromium, nickel, and cyanide (complexed). Vermont American claims that cyanide, nickel, and cadmium are not used in any of its process. In addition, they claim that although chromium is used in the process, the wastewater treatment process is successful in immobilizing the chromium and generating a non-hazardous sludge. Vermont American further claims that the waste is not hazardous for any other reason.

Vermont American has provided a detailed description of its manufacturing and wastewater treatment processes, including schematic diagrams; total constituent and EP toxicity analyses of the sludge for cadmium, chromium, and nickel; and a total constituent analysis and a distilled water leachate test for cyanide. Vermont American also has submitted total constituent analyses and EP toxicity test results for arsenic, barium, lead, mercury, selenium, and silver; total oil and grease; and TOC analyses of representative waste samples. Vermont American further submitted a list of raw materials used in the manufacturing process. The Agency requested this information, as noted above, to determine if hazardous constituents other than those for which the waste was originally listed are present in the waste at levels of regulatory concern.

Vermont American uses a continuous conveyor chromium electroplating process that includes descaling, hot and cold dip rinsing, electroplating, spray, rinsing, and flash drying processes. The treatment system treats 3,000 gallons of rinse water at a time. Treatment involves neutralization to a pH of 6-9, chrome reduction using a recirculating Andco® chromate and heavy metal removal system (electrochemical reduction), flash mixing with the

<sup>49</sup> See footnote 10.

<sup>50</sup> See footnote 11.

<sup>51</sup> The calculated upper limits of a 95 percent confidence interval for cadmium, chromium, nickel, and cyanide are 0.08, 0.411, 1.928, and <0.02 ppm, respectively. Using these calculated upper limit values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water Standards for cadmium and chromium, the U.S. Public Health Service's suggested drinking water standard for cyanide, or the Ambient Water Quality Criterion for nickel. See footnote 12 for an explanation of the confidence interval calculation.

<sup>52</sup> See footnote 13.

<sup>53</sup> See footnote 15.

<sup>54</sup> Vermont American originally submitted their petition on May 3, 1983. On November 8, 1984, the Hazardous and Solid Waste Amendments of 1984 were enacted. In part, the Act requires the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if the Agency has a reasonable basis to believe that such additional factors could cause the waste to be hazardous waste. (See section 222 of the Amendments, 42 U.S.C. 3001(f). In anticipation of either enactment of this legislation or regulatory changes by the Agency, EPA requested additional information from Vermont American. See 49 FR 4803, February 8, 1984. This additional information was submitted by Vermont American on January 12, 1984.



addition of a polyelectrolyte precipitant, clarification, plate and frame filtration (to 30 percent solids content), and drum containerization.

Eight composite samples were collected over a period of two months. Each composite sample represented the waste generated over a one week period. Each composite sample is made up of grab samples from different sections of each leaf of the filter press. Vermont American claims the samples collected are representative of any variation of the listed and non-listed constituent concentrations in its wastestream. Vermont American further claims that the raw materials, production process, and treatment process do not vary over time.

The total constituent analyses of the sludge revealed maximum concentrations presented in Table 1. Maximum extract levels for these same constituents are reported in Table 2.

TABLE 1

|                  | Maximum total constituent analysis (ppm) |        |      |      |      |
|------------------|------------------------------------------|--------|------|------|------|
|                  | Cd                                       | Cr     | Cr+6 | CN   | Ni   |
| Filter Cake..... | 1.5                                      | 37,200 | 1.49 | 0.81 | 65.9 |

TABLE 2

|                  | Maximum leachate concentration (ppm) |      |      |                            |
|------------------|--------------------------------------|------|------|----------------------------|
|                  | Cd                                   | Cr** | Ni   | CN distilled water extract |
| Filter Cake..... | <0.01                                | 1.23 | 0.41 | <0.01                      |

\*\* See footnote 7.

The maximum total oil and grease content reported was 0.77 percent. Filter cake sample analyzed for TOC exhibited a maximum content of <1 percent. Vermont American also submitted a list of all raw materials used in their process. This list indicated that no Appendix VIII constituents, other than those tested for, are used in the process and that formation of any of these constituents is highly unlikely. Vermont American also claims that it generates a maximum of 14 tons of waste annually from its plate and frame press.

#### B. Agency Analysis and Action

Vermont American has demonstrated that the waste treatment sludge generated from its filter press is non-hazardous. The Agency believes that the eight composite samples from the filter

press adequately represent any variations that may occur in the waste stream petitioned for exclusion. The Agency is satisfied that the weekly compositing does not mask concentration variations, since the process engineering indicates that samples collected on one day would not be expected to vary widely from those collected on any other day. Due to the nature and consistency of the operations involved (i.e., the facility is not a job shop and production does not vary on a seasonal basis), the Agency believes that the sample are representative of the waste generated by Vermont American. The Agency further believes that the compositing did not create any biased averaging of daily constituent concentrations since the daily batches are combined for disposal every four to five days. Weekly composites thus are better examples of the waste as disposed of, than daily samples. The Agency also accepts Vermont American's claim that the duration of the sampling period was long enough to cover any scheduled changes in the product line since the facility does vary its product line (or consequently the raw materials used over the course of the year.

The Agency's conclusion that the sampling adequately represents Vermont American's waste was confirmed by a comparison of the total constituent analyses of each sample as well as a statistical analysis of the EP toxicity data from each sample. This analysis would have, but did not, detect any significant variability in the waste, (i.e., the standard deviation was low).<sup>56</sup>

The Agency has evaluated the mobility of the constituents from Vermont American's waste using a vertical and horizontal spread (VHS) model.<sup>57</sup> The Agency's evaluation of Vermont American's maximum generation rate of 14 tons annually and the maximum extract levels reported, using the VHS model, has generated the receptor well concentrations exhibited in Table 3.

<sup>56</sup> See footnote 8.

<sup>57</sup> See footnote 9.

<sup>58</sup> See footnote 10.

<sup>59</sup> See footnote 11.

<sup>60</sup> See footnote 13.

<sup>61</sup> The calculated upper limits of a 95 percent confidence interval for cadmium, chromium, nickel, and cyanide are <0.01, 1.02, 0.29, and 0.89 ppm, respectively. Using these calculated upper limit

TABLE 3

|                       | VHS Model: Calculated receptor well concentration (ppm) |        |        |        |
|-----------------------|---------------------------------------------------------|--------|--------|--------|
|                       | Cd                                                      | Cr     | Ni     | CN     |
| Filter Cake.....      | <0.01                                                   | <0.001 | <0.001 | <0.001 |
| Health-Based Standard |                                                         |        |        |        |
|                       | .01                                                     | .05    | 0.632  | 0.2    |

The filter press sludge exhibited cadmium and chromium levels (at the receptor well) well below the National Interim Primary Drinking Water Standards; nickel levels below the Ambient Water Quality Criterion,<sup>58</sup> and cyanide levels below the U.S. Public Health Service's suggested drinking water standard.<sup>59</sup> Total cyanide levels in the waste also are below the air threshold limit set by the American Conference of Governmental Industrial Hygienists (ACGIH).<sup>60</sup> These constituents, therefore, are not of regulatory concern.<sup>61</sup>

The Agency has also concluded through the use of VHS model, that no other hazardous inorganic constituents are present in the waste at levels of regulatory concern (i.e., none are above any health-based standard at the receptor well in the VHS model) and that no hazardous organic constituents are present based on the indicator tests described below. The raw materials used by Vermont American in their manufacturing process do not contain any additional hazardous constituents. For organic toxicants, this is confirmed by comparing the levels of TOC and oil and grease present in the waste to the raw materials list. The TOC present reflects the oil and grease in the waste.<sup>62</sup> The Agency believes, therefore, that the differences in the levels of TOC and oil and grease are not significant and that no other organic hazardous constituents are present in the waste. For toxic metals, the data submitted by Vermont American (see above) shows low extract levels. Using these values in the VHS model results in levels at the well below the applicable health-based standards as seen in Table 4.

values in the VHS model, the receptor well concentrations will not exceed the National Interim Primary Drinking Water standards for cadmium and chromium, the Ambient Water Quality Criterion for nickel, or the U.S. Public Health Service's suggested drinking water standard for cyanide. See footnote 12 for an explanation of the confidence interval calculation.

<sup>62</sup> See footnote 15.



TABLE 4

|               | VHS Model: Calculated receptor well concentrations (ppm) |      |       |         |        |        |
|---------------|----------------------------------------------------------|------|-------|---------|--------|--------|
|               | As                                                       | Ba   | Pb    | Hg      | Se     | Ag     |
| Filter Sludge | <0.012                                                   | <0.3 | <0.02 | <0.0008 | <0.005 | <0.009 |
|               | Health-Based Standards                                   |      |       |         |        |        |
|               | .05                                                      | 1    | .05   | 0.002   | 0.01   | 0.05   |

The Agency believes that the treatment process used by Vermont American generates a non-hazardous waste. The Agency, therefore, proposes to grant an exclusion to Vermont American's Larson Manufacturing Company, located in Newark, Ohio, for its electroplating wastes, as described in its petition.

#### IX. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal to grant exclusions is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This overall reduction in costs is achieved by excluding wastes generated at specific facilities from EPA's listed hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. Although the Agency also is proposing to deny a petition for one waste, our decision should not trigger a Regulatory Impact Analysis, especially since the waste has been handled as hazardous over the past four years.

#### X. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this final regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

#### List of Subjects in 40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: February 14, 1985.

Jack McGraw,

Assistant Administrator for Solid Waste and Emergency Response.

#### Appendix I

In listing wastes as hazardous under the Resource Conservation and Recovery Act (RCRA), the Agency considers the criteria contained in 40 CFR 261.11. These criteria, among other things, require the Agency to evaluate the waste against a number of factors (*e.g.*, the constituents identified in the waste; the hazards associated with each constituent; whether these constituents are present in significant concentrations; and the potential for the constituents to migrate from the waste, persist in the environment, and reach environmental receptors so as to cause substantial harm to human health or the environment). See 40 CFR 261.11(a)(3). EPA believes that these same factors also are pertinent in deciding whether to delist a waste. The Agency, therefore, is proposing to use a qualitative and quantitative approach to evaluate the hazardousness of the wastes in various delisting petitions.

This approach considers a number of factors, including:

- The toxicity of the constituents of the waste;
- The concentration of the constituents in the waste;
- The mobility of the toxicants in the waste;
- The persistence of the specific toxicants;
- The plausible types of improper management of the waste; and
- The quantity of waste generated.

This approach, which makes reasonable worst case assumptions, will be used to predict the level of the various toxicants which could migrate to environmental receptors.

The Agency may consider other factors in evaluating delisting petitions (*e.g.*, the degree to which toxic constituents bioaccumulate in ecosystems, damage incidents involving

wastes containing the toxic constituents, actions taken by other governmental agencies with respect to the waste or its toxic constituents and ground-water monitoring data). These factors, however, have not been quantified; they will be considered qualitatively by the Agency, in addition to the quantitative approach.

In the quantitative approach (the VHS model discussed below), the toxicity of the waste will be evaluated by comparing the toxicant levels for the specific toxicants at a drinking water well with the recommended drinking water standards, ambient water quality criteria, occupational safety and health limits, or other health-based exposure values, as appropriate. If the value at the well predicted by the model is less than the health-based standard, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the well is above the health-based standard, however, then the waste probably still will be considered hazardous and not excluded from Subtitle C control.

The mobility of the toxicants from the waste comes from either actual leachate values (for metals) or an estimate of the leachate concentration, based on the type of waste and the concentration of the component in the waste (for organics).

The persistence of toxicants will be incorporated into the model for organics by considering hydrolysis and biodegradation rates, if appropriate for the mismanagement practices anticipated. Metals do not degrade, so no degradation is assumed.

The waste quantity is factored into this model by estimating the size of a land disposal facility required for the waste. Since large facilities will result in a greater concentration of a constituent in a given aquifer, the model requires lower migration levels for delisting for high volume wastes, to ensure that the water at nearby wells still meets the health-based standards.

The model as a whole and the individual factors have been selected to represent a reasonable management and fate of a non-hazardous waste. The following discussion assumes disposal at an unlined municipal landfill followed by migration of the constituents to a nearby well. The Agency also will consider air and surface water migration when considering other types of wastes (*e.g.*, petroleum refinery waste).

The model considers three basic steps:

- Generation of a leachate from the waste:



- Migration of the leachate to an underlying ground-water aquifer; and
- Migration of the contaminated ground-water in the aquifer to a nearby drinking water spell.

The first phase of the model uses the same disposal scenario as the EP Toxicity Characteristic (e.g., a mixture of five percent industrial waste with ninety-five percent municipal waste) to generate a leachate value. An appropriate leaching test or leaching estimation method will be used to determine the toxicant concentration in the mobile phase.

The second phase of the model estimates the attenuation that may occur during the migration of the leachate from the waste to the underlying aquifer. Fifty soil dispersion models have been evaluated to predict the concentration of contaminants exiting a soil column.<sup>1</sup> These models generally predict an attenuation of at most fifty percent for toxicants in the leachate of a waste continuously applied to a soil column.<sup>2</sup> In fact, many of the models evaluated predict no attenuation at all, since eventually a soil will become saturated and unable to absorb any more of a particular toxicant. The Agency, therefore, has assumed that no attenuation occurs during this phase of the model, since this is a reasonable worst case characteristic of saturated soil systems.

The third, and most complex, phase of the model approximates the dispersion of the contaminants in a drinking water aquifer in the vertical and horizontal directions perpendicular to ground-water flow. This portion of the model represents a continuous source of contamination to an aquifer moving at a steady velocity in one direction, subject to spreading perpendicular to the flow-path. Domenico and Palciauskas have described this (VHS) model.<sup>3</sup>

The following equation described the VHS model:<sup>4, 5</sup>

$$C = C_0 \text{ERF} [Z/(2(DY)^{1/2})] \text{ERF} [X/(4(DY)^{1/2})]$$

where:

C=contaminant concentration at the receptor well [mg/l]

C<sub>0</sub>=contaminant concentration in the leachate [mg/l]

ERF=error function [dimensionless]

Z=aquifer penetration depth (mixing zone) [m]

D=dispersivity [m]

Y=distance to well [m]

X=length of disposal site (amount of waste) [m]

This equation has three basic terms: the initial concentration of the contaminant in the leachate (C<sub>0</sub>), a term for the spreading of the contaminant in the vertical direction (the error function term in Z), and a term for the spreading of the contaminant in the horizontal direction (the error function term in X).<sup>6</sup>

To use the VHS ground-water model, all of the factors must be specified in order to calculate C, the contaminant concentration expected in a nearby drinking water well. Specifically, one must identify the concentration of the contaminant in the leachate reaching the aquifer, the dispersivity of the aquifer, the distance to the well, the maximum penetration depth of the leachate into the aquifer, and the length of the waste disposal site. We have selected the reasonable worst case values for these parameters, except for the leachate concentration and the size of the disposal site (amount of waste) which will vary with each delisting petition. A discussion of each of these parameters follows, including our rationale for the values selected for use in this portion of the model.

#### 1. Leachate Concentration

The first value required by the model is the original leachate concentration entering the aquifer. All petitioners run a leaching test for metal-bearing wastes. Most petitioners would use the EP toxicity test to determine the mobile fraction unless the Agency were to consider the EP toxicity test to be inadequate for the waste; persons who generate an oily waste would use an alternate leaching test devised by the Agency—The Oily Waste EP. The Agency is using the maximum leaching values obtained from each waste as a reasonable worst case for this variable.<sup>7</sup>

<sup>1</sup> This model neglects longitudinal dispersion (dispersion in the direction of ground-water flow) since this type of dispersion is only important in non-steady state systems. (See: Harleman, D.R.F. and Rumer, R.R., *Journal of Fluid Mechanics*, Vol. 16, Part 3, pp. 385-44, July 1963.) Had longitudinal dispersion been considered, an additional term would appear in the equation in the Y dimension.

<sup>2</sup> In this particular equation, the X and Y coordinates are non-conventional, (i.e., reversed). The coordinate system used here is exactly the way it was presented in the original literature. While it would be useful to change coordinates to be consistent with other types of models, the Agency believes it would lead to further confusion, especially if commenters wanted to check the original literature.

<sup>3</sup> Since there is no attenuation in saturated soils, as noted above, the concentration leaching from the waste and that entering the aquifer are assumed to be the same.

For organics, however, calculating the concentration of each organic entering the aquifer is more difficult. The Agency has noted that no acceptable leaching procedure for organics is available and that the EP leachate may not reflect the concentrations actually leached for organics.<sup>8</sup> Delisting petitioners have been asked to provide the total concentration of organics in the waste. The problem is to convert this value into a concentration entering the aquifer. This concentration can be estimated if it is known how a particular chemical will partition between a mobile phase and the remainder of the waste. From the partition coefficient, one can estimate the concentration of each organic entering the aquifer. This approach can be expressed mathematically by:

$$K = \frac{C_0}{C_w}$$

where:

K is the partition coefficient

C<sub>0</sub> is the contaminant concentration in the leachate

C<sub>w</sub> is the contaminant concentration in the waste.

From K and the concentration of the contaminant in the waste, the Agency can calculate the leachate concentration for the particular organic in question. K values for classes of compounds for several waste types have been derived from studies conducted by the Agency.<sup>9, 10</sup> The Agency believes that this approach should be used to estimate the leaching concentrations for many organic wastes, until an organic leaching test is developed. The Agency will publish the K values that will be used for specific chemicals and waste types in a later notice and will specifically request comments on this approach at that time.

#### 2. Dispersivity

Dispersivity is a measure of the spreading and subsequent dilution a contaminated volume of water will undergo when moving. It is a function of the composition of the aquifer. The spreading is directly related to the aquifer composition and the ground-water velocity. High values of dispersivity reflect permeable aquifers; low values indicate relatively impermeable formations.<sup>10</sup> Permeable

<sup>8</sup> Solid Waste: Methodology for Evaluation, Volume 1: Test for Potential Mobility of Toxic Wastes as Leachates, January 1981 (SW-196C.1)

<sup>9</sup> Solid Waste: Methodology for Evaluation, Volume 2: Analysis of Residual Waste, December 1980 (SW 196C.2).

<sup>10</sup> "Technical Review of Groundwater Models", Pope-Reid Associates, Inc., March 1982, U.S. EPA Contract 68-01-6404.

<sup>1</sup> van Gennichten, M. Th., Land Disposal of Hazardous Wastes, Pp. 4th Ann. Res. Symp., Ed. D.W. Shultz, EPA-600/10-78-016, USEPA, MERL, Cincinnati, OH 452 pp. (1978).

<sup>2</sup> van Gennichten, M. Th., Wierenga, P.J., Soil Sci. Soc. Am. J., Vol. 49, No. 4, pp. 473-480, (1976).

<sup>3</sup> Domenico, P.A., Palciauskas, V.V., Groundwater, Vol. 20, No. 3, pp. 303-311 (1982).

<sup>4</sup> Since we assume no attenuation occurs as the leachate migrates from the land disposal facility to the underlying aquifer, C<sub>0</sub> is also the contaminant concentration of the toxicant entering the aquifer.



aquifers also usually have higher ground-water flow rates; less permeable aquifers have much lower flow rates.<sup>10</sup> Thus, an aquifer of very permeable material with a high flow rate will have the maximum dispersivity (spreading) while an impermeable aquifer with a low flow rate will have the lowest dispersivity (spreading).

The values for transverse (vertical and horizontal) dispersivity range from about 0.5 meters (m) to over 10m.<sup>11, 12</sup> A dispersivity of 0.5 m corresponds to an aquifer of relatively impermeable material (i.e., clay or silt stone) while a higher value corresponds to an aquifer composed of a more permeable material (i.e., sand or gravel).<sup>13</sup>

Drinking water aquifers generally have relatively high dispersivity since ground water is more easily removed from permeable material and easy removal is an element of a good drinking water aquifer. A reasonable worst case for dispersivity would be that found at a minimally acceptable drinking water aquifer. The Agency has selected a dispersivity of 2 m since this corresponds to an aquifer that is acceptable for drinking water and yet results in the minimum dispersion of contaminants.<sup>14</sup>

### 3. Distance to well

The Agency has selected 500 feet (152.4 m) for the distance from the facility to the drinking water well. This distance is based on an informal survey of 38 States on the proximity of drinking water wells to municipal landfills.<sup>15</sup> This survey is limited since the results usually were only best estimates and the values reported frequently were given as a range. The survey indicates, however, that fifty-five percent (55%) of the States polled believe the closest drinking water wells to any municipal landfill are greater than 1,000 ft. away, twenty-one percent (21%) believe the closest well is between 500 to 1,000 ft. away, thirteen percent (13%) believe the closest well is between 200 to 500 ft. away, and eleven percent (11%) believe the closest well is

less than 200 ft. away. These statistics use the lowest value in each of the ranges reported. Although 500 feet is not the absolute worst case, the Agency believes that it is a reasonable worst case, since more than three-quarters of those surveyed believe that the closest a drinking well to a waste facility in their state is a least 500 feet. The Agency further believes that 500 feet is a reasonable value since this distance was assumed for the EP Toxicity Characteristic.

The model considers not only the distance from the facility to the well but also the placement of the well. The model assumes that the well is in the exact position to receive the highest concentration of the contaminant (i.e., the bottom of the well is just at the top of the aquifer and the well is exactly in line with the disposal facility and the ground-water flow). The well placement assumptions are absolute worst case. The Agency solicits comments on these assumptions.

### 4. Penetration Depth and Facility Length

The aquifer penetration depth (Z) and the facility length (X) are related terms and must be considered together. The penetration depth of the leachate (Z), or mixing zone, is the depth of the maximum penetration of the leachate into the aquifer at the waste boundary. This value is a function of the width of the facility and the dispersivity of the aquifer in the transverse direction. Other things being equal, the greater the facility width, the greater the penetration (Z) will be. As the width of the facility increases, the ground water will take longer to traverse the facility. If the leachate is percolating into the aquifer at a constant rate, then the resulting penetration depth can be described by the following formula:<sup>16</sup>

$$Z = Y \times \frac{V_e}{V_{gw}}$$

Where:

Z is the penetration depth [m]

Y is the depth of the facility [m]

V<sub>gw</sub> is the velocity of the ground water (longitudinal) [m/yr]

V<sub>e</sub> is the velocity of the leachate penetrating the aquifer [m/yr]

Z is directly dependent on the facility depth and the ratio of the two velocities.

<sup>16</sup> This assumes that the vertical pressure on the aquifer is the same from beneath the disposal site to the well. This will be true for most landfills, since rainfall and soil composition are the major determinants of vertical pressure and these often do not vary over the distance (assumed to be 500 ft.) from the disposal site to the well. Unlined surface impoundments which receive liquids may be subject to increased vertical pressure due to the additional liquids.

These velocities can be estimated from the amount of spreading that will be experienced in the longitudinal and vertical direction. As pointed out above, dispersivity is a measure of spreading and thus the ratio of V<sub>e</sub> over V<sub>gw</sub> can be approximated by the ratio of the dispersivities in those directions. Vertical dispersivity usually is between one tenth and one quarter of the longitudinal dispersivity.<sup>17, 18</sup> The ratio of V<sub>e</sub> over V<sub>gw</sub> thus can be approximated by the ratio of the dispersivities since the dispersivity measures the extent of spreading, and Z will be between one tenth and one quarter of Y. The higher value will be more conservative since the higher the penetration depth the less the dilution between the facility boundary and the well and thus the higher the contaminant concentration at the well. The Agency set Z at .25Y. The model therefore assumes a facility depth of 40 feet (as explained below); consequently, Z is 10 feet (3m).<sup>19</sup>

The length of the disposal site (X) is a function of the quantity of waste disposed and the placement of the waste at the disposal site. The amount of waste is obtained directly from the petition. Waste placement, however, is a site-specific factor. In order to determine how wastes are placed in municipal sanitary landfills (the disposal method assumed here), the Agency surveyed 41 State Solid and Hazardous Waste Agencies.<sup>20</sup> This survey indicates that State-operated facilities put wastes into cells in one of two ways, the trench method and the area method, and that using either method, the cells are an average of 8 feet high. The survey further indicated that the trench method used lower cell widths than the area method. In this case, the average width was 40 feet.

To be conservative, (i.e., maximize the X value) the Agency assumes the cell width to be 40 feet. To determine the length of the facility (X), the Agency will divide the volume of the waste<sup>21</sup> by 320 ft<sup>2</sup>.<sup>22</sup> To further insure that X will be

<sup>17</sup> See footnote 10.

<sup>18</sup> See footnote 11.

<sup>19</sup> Recent investigations indicate that actual vertical penetration (Z) may be less than that calculated above. The model thus may overestimate the dilution of the contaminants. The Agency specifically requests comments on this aspect of the model.

<sup>20</sup> Informal Telephone Survey conducted by JRB Associates, October 19, 1984. See public docket—Memorandum from Cary Gaunt to Jim Popplitt.

<sup>21</sup> This is obtained by dividing the generation rate by the waste density supplied by the petitioner. If no density is supplied, the Agency will assume that one metric ton of waste is approximately equal to one cubic meter, since this is a conservative estimate.

<sup>11</sup> "Description of Parameters and Data (and Typical Ranges of Values) Useful for Evaluation of Migrational Potential at Hazardous Waste Management Facilities", Mercer et al., 1982. U.S. EPA Contract 68-01-8464.

<sup>12</sup> "Ground-water Modelling", Mercer, J.W., and Faust, C.R., National Water Well Association, 1981.

<sup>13</sup> "AT123D: Analytical Transient One-, Two-, and Three-Dimensional Simulation of Waste Transport in the Aquifer System," Yeh, C.T., ORNL-5602, Environmental Sciences Division, Publication No. 1439.

<sup>14</sup> Anderson, M.P., Critical Reviews in Environmental Control, Volume 9, No. 2, pp. 97-156.

<sup>15</sup> Letter report from Cary Gaunt, JRB Associates, to Jim Popplitt, EPA, November 1, 1984. See public docket for complete results.



conservative (*i.e.*, the maximum reasonable amount for each generator), the Agency will use either the volume of waste generated by the facility annually or the volume of waste discarded at the time of disposal, if the waste is disposed of less than once a year. This is very conservative since more frequent disposal probably would result in lower concentrations at the well. Smaller amounts of waste, disposed of more frequently, probably would not be placed end to end; other deposits of material would be placed in the fill between the petitioned waste. This would lead to a greater number of smaller (point) sources scattered throughout the fill, which would allow greater dilution by the underlying aquifer. Consequently, the contaminant concentration resulting at the receptor well would be less than if the waste were disposed of at one time in a single cell. EPA loses control of the waste once it is delisted, however, and cannot mandate how often the waste should be disposed. The agency therefore believes that our assumption (*i.e.*, the waste will be disposed of no more than once a year) is reasonable.

The Agency also has determined that there should be a minimum X of 40 ft. when the waste volume is small. The value of X becomes very small as the waste quantity decreases. As X becomes very small, the error function term in X approaches zero. (The error function is an exponential function with values between zero and one.) For generators of small quantities of waste, (*i.e.*, just above 100 Kg/month), the length of the facility, for purposes of the formula, would be about .04 m/yr, *i.e.* the waste would have the dimensions 8 feet high, 40 feet long, and 2 in. deep.<sup>23</sup> This means that as the length of the facility becomes smaller the largest dimension becomes the depth, which is assumed to be 40 ft. In order to be conservative, the model was configured such that the length (X) of the trench is perpendicular to the ground-water flow. This configuration was used because it assumes that the facility length always will be greater than the facility depth (Y). This is not the case with small volumes. When small volumes are disposed of, the largest dimension of the facility becomes the depth. By assuming this configuration, the Agency wanted to maximize the X dimension (*i.e.* allowing the minimum dilution in the longitudinal direction) by using the largest trench dimension for the length. To be consistent and always maximize X for

smaller quantities of waste, the Agency will assume that X can not be less than 40 ft. This can be explained simply as a 90° rotation of the trench such that the depth becomes the length and vice versa.

The Agency also has considered the effect this rotation would have on the selected Z value. Since the Z value was selected assuming the waste depth was 40 feet, if one now assumes a depth of 2 inches to be consistent the value of Z should be lowered by a factor of 240 (*i.e.* the ratio of 40 feet to 2 inches). The Agency, however (as explained below), assumes no such diminution.

The Agency has concluded that the Z value should remain at 3 m. Maintaining the selected Z value comes from the way in which very small waste volumes are placed in landfills. A small quantity generator's yearly volume would be about 50 ft<sup>3</sup> of waste per year (*i.e.* the volume of 1,200 lbs. of waste with a density of one). If we assume that the waste is placed along the 40 ft. length of the trench and piled 8 ft. high, the waste would form a thin slab only 2 in. thick. It is highly unlikely, however, that a small volume of waste would be managed in this way. In fact, because of the way landfills are operated, it is reasonable to assume that the waste will be spread out in the trench and only achieve a height of a few inches.

When a waste is spread out, the amount of leachate from the waste will increase, since a higher surface area of the waste will be exposed for leaching. This increased rate will be in proportion to the additional area exposed. For example, if 50 ft<sup>3</sup> of waste were spread out so it was 1 ft. high, leaching would occur over 50 ft<sup>2</sup>. If the waste were piled 2 ft. high, however, leaching would occur over only 25 ft<sup>2</sup>. While the absolute rate of leaching from the waste will stay constant (*e.g.* 5 mg/1 of leachate), because of the increased surface twice as much of the contaminant will leach out over a given time if the waste is 1 ft high vs. 2 ft high. If the level of the contaminants in the waste are high compared to their leaching levels, then the amount of leachate will vary depending on the surface area exposed.

The Agency believes that the largest reasonable cell dimensions should be used, to be conservative. The Agency believes that spreading over a 40x40 foot area is a reasonable worst case for a small volume of waste, since earth moving equipment needs at least this much area in which to operate.

The Agency also recognizes that small quantities of waste often are mixed with wastes from small quantity generators. This co-disposal may cause the material

placed in the cell to leach toxicants at levels higher than that expected. Accordingly, the Agency believes that the minimum of 40 ft. for X is justified; at the same time, a minimum cell dimension of 40 ft. in the Y direction is assumed (or at least a Z of 3 m. is retained).

The Agency recognizes that in certain circumstances the VHS model, as delineated above, may not be appropriate to evaluate the hazard posed by some wastes. The Agency believes that its assumption that Z is 3 m. may need to be re-examined, and adjusted if necessary, when considering surface impoundments and when waste quantities are very large. As stated earlier, unlined surface impoundments are likely to have a higher Z, due to an increased hydraulic pressure. Also, when waste volumes become large enough to have an X value greater than 300 ft. (for a waste with a density of 1, this would correspond to 2700 metric tons/yr) then the assumption that the waste will be placed in a trench 40 feet deep may need to be re-examined. In such cases, the waste is likely to be placed in another trench, usually adjacent to (behind) the first trench. This situation likewise would increase Z. This can be accounted for by increasing the Y value in the equation for Z. The Agency believes these limitations do not preclude us from using the model. In the situations mentioned, however, the Z value may need adjustment. In this proposal, however, the Agency has applied the model as is, without adjusting the Z or X dimensions for surface impoundments or any other reason. This was done to avoid confusion and to allow time to solicit comment on how or if these factors might be taken into account before making such changes. If changes to this model do result from comments, the Agency will re-evaluate its decisions proposed today. Furthermore, the Agency does not intend to grant any final exclusions until comments on the model are evaluated.

The Agency believes that this ground-water model is quite conservative, since it does not consider several factors which may reduce the concentration of the toxicants in the well further (*i.e.*, aquifer recharge, precipitation of metals in the aquifer, and longitudinal dispersion). In addition, although each variable selected for this model is not an absolute worst case value, in total, the model represents an extreme worst case for the factors considered. The Agency specifically solicits comments on these additional factors and the values selected for the factors considered. If a

<sup>23</sup> This value is from the cell dimensions, *i.e.* 40 feet by 8 feet.



commenter believes that additional factors should be considered, EPA would like comments on what those factors should be and how to rationally select values for them. If a commenter believes that a different value should be used for the factors used in the model, the Agency would like suggestions on what those values should be.

This model, as all models, has limitations. First, the model assumes mixing of the waste leachate with fresh water. This neglects the effects of prior contamination of the aquifer. This may be important if many facilities dispose of similar wastes in the vicinity or if there are a large number of small quantity generators in the area. The model also does not consider the possible synergistic leaching effect which may result from co-disposal with industrial wastes. For example, the amount of metal leaching from a waste which is co-disposed with a spent non-

hazardous acid with a pH slightly greater than 2 may be much greater than that predicted by the EP (pH 5). Although these factors may be significant at particular disposal sites, the Agency is unable to determine how to take these additional factors into account in a general model.

Furthermore, it should be noted that the Agency is currently developing a more elaborate model for use in its land disposal ban program. This model uses spreading in the horizontal and longitudinal directions and directly accounts for other factors such as recharge and metal precipitation. EPA has decided not to use that model at this time in the delisting program since it is not yet ready for use. This model was recently submitted to the Science Advisory Board for review. Once that approach is promulgated, however, the Agency again will consider using it for delisting.

The Agency believes that this approach, with its limitations, is reasonable. We request comment, however, on the use of the VHS model and how to deal with these limitations.

For the reasons set out in the preamble, 40 CFR Part 261 is proposed to be amended as follows:

#### PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 reads as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. In Appendix XI, add the following wastestreams in alphabetical order:

#### Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility                                       | Address            | Waste description                                                                                                                                                                                                                          |
|------------------------------------------------|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Wastes excluded from non-specific sources: |                    |                                                                                                                                                                                                                                            |
| Gould, Inc.                                    | McConnelsville, OH | Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication].                                                                                                           |
| Keymark Corp.                                  | Fonda, NY          | Wastewater treatment sludge (EPA Hazardous Waste No. F019) generated from chemical conversion coating of aluminum after [date of publication].                                                                                             |
| Monroe Auto Equipment                          | Paragould, AR      | Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after vacuum filtration after [date of publication]. This exclusion does not apply to the sludge contained in the on-site impoundment. |
| Siegel-Robert Inc.                             | St. Louis, MO      | Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication].                                                                                                           |
| Vermont American                               | Newark, OH         | Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations after [date of publication].                                                                                                           |
| (b) Wastes excluded from specific sources:     |                    |                                                                                                                                                                                                                                            |
| Mearl Corp.                                    | Peekskill, NY      | Wastewater treatment sludge (EPA Hazardous Waste Nos. K006 and K007) generated from the production of chrome oxide green and iron blue pigments after [date of publication].                                                               |



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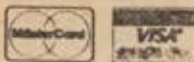
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